

8-14-81  
Vol. 46—No. 157  
BOOK 1:  
Pages  
41019-41284

BOOK 2:  
Pages  
41285-41486

# Federal Register

Book 1 of 2 Books  
Friday, August 14, 1981

---

## Highlights

- 41021 Mediterranean Fruit Fly** USDA/APHIS establishes regulations to restrict interstate movement of certain articles from areas in Hillsborough County, Florida.
- 41328 Motor Vehicles—Used Cars** FTC requires used car dealers to disclose information about warranty coverage and other related information on window stickers. (Part III of this issue)
- 41081 Consumer Protection** CPSC proposes standard and test method to reduce risk of electrocution in connection with omnidirectional citizens band base station antennas.
- 41204 Banks and Banking** FFIEC requests comments on guidelines requiring use of accrual accounting by all insured commercial and State chartered mutual savings banks.
- 41043 Income Tax** Treasury/IRS corrects temporary regulations on partial exclusion for certain conservation cost-sharing payments.
- 41057, 41104 Noise Control Standards** EPA suspends enforcement and proposes revoking certain noise emission reporting and recordkeeping requirements. (2 documents)

CONTINUED INSIDE





**FEDERAL REGISTER** Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by Act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers, free of postage, for \$75.00 per year, or \$45.00 for six months, payable in advance. The charge for individual copies is \$1.00 for each issue, or \$1.00 for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

There are no restrictions on the republication of material appearing in the **Federal Register**.

Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

## Highlights

- 41047 Handicapped** Treasury/RSO announces interim handicapped discrimination regulations.
  - 41380 Labor** Labor/ESA/W & H proposes regulations on labor standards for Federal service contracts. (Part IV of this issue)
  - 41438 Labor** Labor proposes rules of practice for appeals board on Service Contract Act and Contract Work Hours and Safety Standards Act matters. (Part VI of this issue)
  - 41428 Labor/Sec'y** proposes rules on administrative proceedings enforcing labor standards in Federal and federally assisted construction contracts and Federal service contracts. (Part V of this issue)
  - 41444 Labor/ESA/W & H** proposes changes to procedures for predetermination of wage rates under Davis-Bacon and related acts. (Part VII of this issue)
  - 41456 Labor/ESA/W & H** revises labor standards covering federally financed and assisted construction and contracts. (Part VIII of this issue)
  - 41061 Medicare** HHS/HCFA clarifies procedures for calculating payment amount for services furnished by independent rural health clinics.
  - 41059 HHS/HCFA** provides uniformity in requirements for immunohematological testing, transfusion services and bloodbanking for facilities participating in medicare program.
  - 41047 Postal Service** PS amends requirements for preparation of third-class 5-digit ZIP code presorted mail.
  - 41208 Cigarettes** FTC corrects report on "tar," nicotine and carbon monoxide content of smoke for 187 varieties of cigarettes.
  - 41472 Foods** USDA/FNS revises requirements which permit distributing, subdistributing and recipient agencies to employ commercial facilities to process USDA-donated foods. (Part IX of this issue)
  - 41288 Minimum Wages** Labor/ESA/W & H publishes minimum wages for Federal and federally assisted construction. (Part II of this issue)
  - 41229 Regulatory Flexibility Plan** IDCA/AID
  - 41242 Sunshine Act Meetings**
- Separate Parts of this Issue**
- 41288 Part II, Labor/ESA/W & H**
  - 41328 Part III, FTC**
  - 41380 Part IV, Labor/ESA/W & H**
  - 41428 Part V, Labor/Sec'y**
  - 41438 Part VI, Labor/Sec'y**
  - 41444 Part VII, Labor/ESA/W & H**
  - 41456 Part VIII, Labor/ESA/W & H**
  - 41472 Part IX, USDA/FNS**



# Contents

Federal Register

Vol. 46, No. 157

Friday, August 14, 1981

- Agency for International Development**  
NOTICES  
41229 Regulatory flexibility plan
- Agricultural Marketing Service**  
RULES  
41029 Lemons grown in Ariz. and Calif.  
Milk marketing orders:  
41029 Chicago Regional  
PROPOSED RULES  
41077 Cauliflower, frozen; grade standards
- Agriculture Department**  
See Agricultural Marketing Service; Animal and Plant Health Inspection Service; Commodity Credit Corporation; Federal Grain Inspection Service; Food and Nutrition Service; Food Safety and Quality Service; Soil Conservation Service.
- Animal and Plant Health Inspection Service**  
RULES  
Livestock and poultry quarantine:  
41031 Brucellosis  
Plant quarantine, domestic:  
41021 Mediterranean fruit fly; Florida; emergency rule and hearing
- Blind and Other Severely Handicapped, Committee for Purchase From**  
NOTICES  
41130 Procurement list, 1981; additions and deletions (2 documents)
- Civil Aeronautics Board**  
NOTICES  
Hearings, etc.:  
41122 Air Florida, Inc.  
41122 Former large irregular air service investigation; Pan Aero International
- Commerce Department**  
See International Trade Administration; National Oceanic and Atmospheric Administration.
- Commodity Credit Corporation**  
NOTICES  
41242 Meetings; Sunshine Act (2 documents)
- Commodity Futures Trading Commission**  
NOTICES  
41242 Meetings; Sunshine Act
- Consumer Product Safety Commission**  
PROPOSED RULES  
41081 Citizens band base station antennas, omnidirectional; safety standard or nonmandatory test method
- Defense Department**  
NOTICES  
Meetings:  
41132 DIA Advisory Committee (2 documents)
- 41132 Education of Handicapped Dependents National Advisory Panel
- Economic Regulatory Administration**  
NOTICES  
Consent orders:  
41133 Plateau, Inc.  
Remedial orders:  
41134 True Oil Co.
- Employment and Training Administration**  
NOTICES  
Adjustment assistance:  
41231 Allied Corp. et al.  
41231 Armstrong Rubber Co. et al.  
41232 Bridon American Corp. (2 documents)  
41232 J&S Investments, Inc.  
41232 Michigan Plating & Stamping  
41233 Patton Shirt Manufacturing Co., Inc.  
41233 Town & Country Shoes, Inc.
- Employment Standards Administration**  
RULES  
Final rules; deferral of effective dates (Editorial note: For documents on this subject see entries under Labor Department)  
NOTICES  
41288 Minimum wages for Federal and federally-assisted construction; general wage determination decisions, modifications, and supersedeas decisions (Ariz., Calif., Conn., D.C., Ga., Hawaii, Ill., Ind., Iowa, Ky., La., Md., Mass., Mich., Minn., Nev., N.Y., Ohio, Pa., Tex., Va., and Wis.)
- Energy Department**  
See also Economic Regulatory Administration; Federal Energy Regulatory Commission; Western Area Power Administration.  
NOTICES  
Conduct standards:  
41133 Divestiture requirements; supervisory employees; waiver granted  
Grants; availability, etc.:  
41132 Energy Extension Service and State Energy Conservation regional program; New England States
- Environmental Protection Agency**  
RULES  
Air programs; approval and promulgation; State plans for designated facilities and pollutants:  
41055 North Carolina  
Air quality implementation plans; approval and promulgation; various States, etc.:  
41050 Georgia  
41051 Ohio  
41053 Washington  
41054 Wisconsin  
Air quality planning purposes; designation of areas:  
41056 Wisconsin  
Noise abatement programs:



- 41057** Portable air compressors, medium and heavy trucks, motorcycles and motorcycle replacement exhaust systems, truck mounted solid waste compactors, and noise labeling requirements for hearing protectors; enforcement suspension of reporting and recordkeeping requirements

**PROPOSED RULES**

Air quality implementation plans; approval and promulgation; various States, etc.:

- 41103** Maine; correction  
Hazardous waste programs; interim authorizations; various States:

- 41103** New Hampshire

Noise abatement program:

- 41104** Portable air compressors, medium and heavy trucks, motorcycles and motorcycle replacement exhaust systems, truck mounted solid waste compactors, and noise labeling requirements for hearing protectors; reporting and recordkeeping requirements

**NOTICES**

Air quality; prevention of significant deterioration (PSD):

- 41201** Permit approvals  
**41202** Permit rescissions  
Environmental statements; availability, etc.:  
**41203** Agency statements; weekly receipts  
**41203** Las Virgenes-Triunfo-Malibu-Topanga, Calif.; areawide wastewater facilities plan; withdrawn

**Environmental Quality Council****NOTICES**

National Environmental Policy Act:

- 41131** Agency implementation; inquiry

**Equal Employment Opportunity Commission****NOTICES**

- 41242** Meetings; Sunshine Act (2 documents)

**Federal Communications Commission****RULES**

Radio broadcasting:

- 41078** Educational broadcast stations; non-commercial nature; policy statement; correction

**NOTICES**

Radio services, special:

- 41204** VHF marine radio rules and channel usage guide; pamphlet availability

**Federal Emergency Management Agency****RULES**

Flood elevation determinations:

- 41063**, Alabama et al. (2 documents)

**41066**

- 41074** Pennsylvania

Flood insurance; special hazard areas; map corrections:

- 41075**, Illinois; correction (2 documents)

**41076**

**PROPOSED RULES**

Flood elevation determinations:

- 41110** Arizona et al.  
**41118** Florida  
**41119** Massachusetts; correction  
**41119** Minnesota  
**41120** Pennsylvania, correction  
**41121** Vermont; correction

**NOTICES**

Radiological emergency; State plans:  
New Hampshire

**41204**

**Federal Energy Regulatory Commission****RULES**

Natural Gas Policy Act of 1978:

- 41034** Incremental pricing; agricultural exemptions; boiler fuel users; effect of judicial action

**NOTICES**

Hearings, etc.:

- 41134** ANR Storage Co.  
**41135** Arkansas Louisiana Gas Co.  
**41135** Arkansas Power & Light Co.  
**41135** Blue Dolphin Pipe Line Co.  
**41136** Bonneville Power Administration (2 documents)  
**41136** Central Illinois Public Service Co.  
**41137** Central Vermont Public Service Corp.  
**41137** Cities Service Gas Co.  
**41138** Cleveland Electric Illuminating Co. (2 documents)  
**41138**, Columbia Gas Transmission Corp. (3 documents)

**41140**

**41140**

**41141**

**41141**

**41141**

**41141**

**41176**

**41176**,  
**41177**

**41177**

**41177**

**41178**

**41178**

**41178**

**41179**

**41179**

**41180**

**41180**

**41180**

**41180**

**41180**

**41181**

**41181**

**41182**

**41182**

**41183**

**41183**

**41184**

**41184**

**41185**

**41185**

**41186**

**41186**

**41187**

**41188**

**41187**

**41187**

**41187**,  
**41188**

**41188**

**41188**

**41189**

**41189**

**41190**

**41190**

**41192**

**41192**

**41192**

**41193**

**41193**

**41194**

**41195**

**41195**

**41195**

ONG Western, Inc.

Phillips Petroleum Co. (2 documents)

Public Service Co. of Colorado

Rohnert Park, Calif. (5 documents)

Samedan Oil Corp.

Southern Natural Gas Co.

Southwest Gas Corp.

Tennessee Gas Pipeline Co. (2 documents)

Tennessee Natural Gas Lines, Inc. (2 documents)

Texas Gas Transmission Corp.

Texas Sea Rim Pipeline, Inc.



- 41196 Trans-Anadarko Pipeline System  
 41196 Transcontinental Gas Pipe Line Corp. (2 documents)  
 41197, Ukiah, Calif. (3 documents)  
 41198  
 41198, United Gas Pipe Line Co. (2 documents)  
 41199  
 41199 Washington Water Power Co.  
 41199 Webster, John N.  
 41200 Western Gas Interstate Co.  
 41201 Wisconsin Public Power Inc. System  
 Natural Gas Policy Act of 1978:  
 41143- Jurisdictional agency determinations (4 documents)  
 41166
- Federal Financial Institutions Examination Council**  
**NOTICES**  
 41204 Accrual accounting guideline; inquiry
- Federal Grain Inspection Service**  
**RULES**  
 41020 Peas, dockage-free dry; grades and grade requirements; CFR correction
- Federal Home Loan Bank Board**  
**NOTICES**  
 41243 Meetings; Sunshine Act
- Federal Maritime Commission**  
**NOTICES**  
 Energy and environmental statements; availability, etc.:  
 41207 Japan Line, Ltd. et al.; replacement of vessels  
 41207 North Carolina State Ports Authority and Trans-Freight Lines, Inc.; land leased at Port of Wilmington, N.C. for handling cargoes, containers, vehicles, and storage of cargoes  
 41206 Puerto Rico Ports Authority and Puerto Rico Maritime Shipping Authority; preference right to docking and mooring of vessels and use of marine terminal facilities  
 41243 Meetings; Sunshine Act  
 Tariff filing requirements; applications for exemption:  
 41207 Puget Sound Tug & Barge Co.
- Federal Mine Safety and Health Review Commission**  
**NOTICES**  
 41243 Meetings; Sunshine Act
- Federal Prevailing Rate Advisory Committee**  
**NOTICES**  
 41207 Meetings
- Federal Reserve System**  
**NOTICES**  
 41243 Meetings; Sunshine Act (2 documents)
- Federal Trade Commission**  
**RULES**  
 41328 Motor vehicles; sale of used cars, dealer window sticker requirements  
**PROPOSED RULES**  
 Home insulation, labeling and advertising:  
 41080 Mobile home manufacturers and retailers; exemption petition

**NOTICES****Cigarettes:**

- 41208 "Tar", nicotine and carbon monoxide content of smoke of domestic cigarettes; listing; correction

**Food and Drug Administration****RULES****Animal drugs, feeds, and related products:**

- 41041 Bacitracin methylene disalicylate  
 41038 Diethylcarbamazine citrate tablets  
 41038 Roxarsone soluble powder  
 41040 Roxarsone tablets  
 41041 Trimethoprim and sulfadiazine sterile suspension

**Food for human consumption:**

- 41037 Bottled water; quality standard

**PROPOSED RULES****Radiological health:**

- 41102 Microwave ovens; radiation leakage compliance measurement instrument requirements and test conditions; reopening of comment period; extension of time

**NOTICES****Food additives, petitions filed or withdrawn:**

- 41212 Fabcon Inc.  
 41214 GRAS or prior-sanctioned ingredients: Cornmint oil and psyllium seed husk gum; hearing

**Human drugs:**

- 41213 Tolazoline hydrochloride oral dosage forms; approval withdrawn

**Medical devices:**

- 41215 JEM #400 endotracheal tube changer; premarket approval

**Meetings:**

- 41212 Advisory committees, panels, etc.

**Food and Nutrition Service****RULES****Food distribution program:**

- 41472 Distributing, subdistributing, and recipient agencies; processing of USDA-donated foods by commercial or institutional facilities

**Food Safety and Quality Service****PROPOSED RULES**

- 41077 Cauliflower, frozen; grade standards

**Health and Human Services Department**

See also Food and Drug Administration; Health Care Financing Administration.

**NOTICES****Organization, functions, and authority delegations:**

- 41215 Social Security Administration; Refugee Resettlement Office transfer

**Health Care Financing Administration****RULES****Medicare:**

- 41059 Hospitals and independent laboratories; immunohematological testing, transfusion services, and bloodbanking; implementation of memorandum of understanding with FDA  
 41061 Independent rural health clinic services, payment amount determination; final rule and request for comments

**Interior Department**

See Land Management Bureau; Surface Mining Reclamation and Enforcement Office.



**Internal Revenue Service****RULES****Income taxes:**

- 41043 Conservation cost-sharing payments exclusion; temporary; correction

**International Development Cooperation Agency**  
See Agency for International Development.

**International Trade Administration****NOTICES****Antidumping:**

- 41122 Steel wire nails from Japan  
Scientific articles; duty free entry:  
41124 Fairleigh Dickinson University School of Dentistry  
41124 Fairleigh Dickinson University School of Dentistry et al.  
41124 North Carolina Department of Agriculture et al.  
41126 University of California at San Diego  
41125 University of Minnesota  
41126 University of Texas Health Science Center  
41126 Veterans Administration Medical Center at San Diego

**International Trade Commission****RULES****Conduct standards:**

- 41036 Ethics in Government; ground transportation of nominal value

**Interstate Commerce Commission****NOTICES****Motor carriers:**

- 41220 Compensated intercorporate hauling operations; intent to engage in  
41221 Finance applications (2 documents)  
41222 Fuel costs recovery, expedited procedures  
41223 Permanent authority applications (2 documents)  
41224 Permanent authority applications; operating rights republication (2 documents)  
41225 Permanent authority applications; restriction removals  
Railroad services abandonment:  
41220 Burlington Northern Railroad Co.  
41220 Chesapeake & Ohio Railway Co.  
41221 Louisville & Nashville Railroad Co. et al.  
41222 Oregon Short Line Railroad Co.

**Justice Department**

See also Parole Commission.

**NOTICES**

- 41230 Newspaper operating agreement; Seattle Times Co. and Hearst Corp.; hearing

**Labor Department**

See also Employment and Training Administration; Employment Standards Administration; Mine Safety and Health Administration; Occupational Safety and Health Administration; Wage and Hour Division.

**RULES**

- 41043- Final rules; deferral of effective dates (3 documents)  
41045

**PROPOSED RULES****Administrative practice and procedure:**

- 41428 Enforcing labor standards in Federal and federally assisted construction and service contracts (Davis-Bacon Act, etc.)  
41438 Service Contract Appeals Board, practice before  
41456 Contracts covering federally financed and assisted construction (and nonconstruction contracts subject to Contract Work Hours and Safety Standards Act); labor standards provisions; weekly payroll requirement elimination, etc.  
41380 Federal service contract labor standards  
41444 Wage rates; predetermination procedures  
**NOTICES**  
Adjustment assistance (Editorial note: See entries under Employment and Training Administration)  
Meetings:  
41234 Trade Negotiations and Trade Policy Labor Advisory Committee

**Land Management Bureau****NOTICES****Applications, etc.:**

- 41217 Arizona  
41218 Coal leases, exploration licenses, etc.:  
Oklahoma  
Exchange of public lands for private land:  
41218 Montana; correction (2 documents)  
Meetings:  
41219 Boise District Grazing Advisory Board  
41219 Susanville District Advisory Council  
Sale of public lands:  
41218 Montana

**Mine Safety and Health Administration****NOTICES****Petitions for mandatory safety standard modifications:**

- 41233 Badger Coal Co.  
41233 Beckley Coal Mining Co.  
41234 Consolidation Coal Co.  
41234 Red Hawk Coal Corp.  
41234 Southern Ohio Coal Co.

**National Oceanic and Atmospheric Administration****NOTICES****Fishermen's contingency fund:**

- 41127 Claim recommendation  
41128 Marine mammals; annual report; availability  
Meetings:  
41128 Mid-Atlantic Fishery Management Council

**National Transportation Safety Board****NOTICES**

- 41243 Meetings; Sunshine Act

**Nuclear Regulatory Commission****NOTICES****Applications, etc.:**

- 41235 Boston Edison Co., et al.  
41235 Portland General Electric Co. et al.



**Occupational Safety and Health Administration  
RULES**

- 41046 State plans; development, enforcement, etc.:  
- Virgin Islands

**Parole Commission****NOTICES**

- 41244 Meetings; Sunshine Act

**Personnel Management Office****RULES**

- 41019 General Schedule, within-grade and quality step increase; and merit pay system; clarification of definitions, etc.

**PROPOSED RULES**

- 41077 General Schedule; loss of merit pay status

**Postal Service****RULES****Domestic Mail Manual:**

- 41047 Third-class 5-digit ZIP Code presorted mail; preparation requirements

**Revenue Sharing Office****RULES**

- 41047 Fiscal assistance to State and local governments: Nondiscrimination for handicapped in federally assisted programs; effective date partially restored on interim basis

**Securities and Exchange Commission****NOTICES**

Self-regulatory organizations; proposed rule changes;

- 41235 American Stock Exchange, Inc., et al.

**Soil Conservation Service****NOTICES**

Environmental statements; availability, etc.:

- 41122 Lower Otter and Dead Creeks Watershed, Vt.

**Surface Mining Reclamation and Enforcement  
Office****RULES**

Permanent and interim regulatory programs:

- 41046 Prime farmland, grandfather exemption; revision; deferral of effective date

**Textile Agreements Implementation Committee****NOTICES**

Cotton, man-made, and wool textiles:

- 41128 Korea  
41129 Pakistan

**Treasury Department**

See also Internal Revenue Service; Revenue Sharing Office.

**NOTICES**

- 41237 National Historic Preservation Act, implementation; final procedures

**Veterans Administration****NOTICES****Meetings:**

- 41241 Educational Allowances Station Committee

**Wage and Hour Division****RULES**

Final rules; deferral of effective dates (Editorial note: For documents on this subject see entries under Labor Department)

**Western Area Power Administration****NOTICES**

Floodplain and wetlands protection; environmental review determinations; availability, etc.:

- 41201 Folsom-Nimbus 115-kV transmission line replacement proposal, Sacramento County, Calif.; inquiry

---

**MEETINGS ANNOUNCED IN THIS ISSUE**

---

**COMMERCE DEPARTMENT**

National Oceanic and Atmospheric Administration—

- 41128 Mid-Atlantic Fishery Management Council, Philadelphia, Pa. (open), 9-8 and 9-9-81

**DEFENSE DEPARTMENT**

Office of the Secretary—

- 41132 Defense Intelligence Agency Advisory Committee, Rosslyn, Va. (closed meeting), 9-10 and 9-11-81  
41132 Defense Intelligence Agency Advisory Committee, Washington, D.C. (closed), 9-17 and 9-18-81  
41132 Education of Handicapped Dependents National Advisory Panel, Overseas Dependents Schools, Alexandria, Va. (open), 9-8, 9-9, and 9-10-81

**FEDERAL PREVAILING RATE ADVISORY COMMITTEE**

- 41207 Meeting, Washington, D.C. (open), 9-3 and 9-24-81

**HEALTH AND HUMAN SERVICES DEPARTMENT**

Food and Drug Administration—

- 41212 Arthritis Advisory Committee (Subcommittee on Disease Modifying Anti-Rheumatic Drugs), Rockville, Md. (open), 9-24-81  
41212 Cardiovascular and Renal Drugs Advisory Committee, Bethesda, Md. (open), 8-31 and 9-1-81  
41212 Dermatologic Drugs Advisory Committee, Rockville, Md. (open), 9-21-81  
41212 Endocrinologic and Metabolic Drugs Advisory Committee, Rockville, Md. (open), 9-10 and 9-11-81  
41212 Obstetrics-Gynecology Device Section of the Obstetrics-Gynecology and Radiologic Devices Panel, Washington, D.C. (open), 9-28-81



**INTERIOR DEPARTMENT**

## Land Management Bureau—

- 41219 Boise District Grazing Advisory Board, Boise, Idaho (open), 9-9 and 9-10-81
- 41219 Susanville District Advisory Council, Susanville, Calif. (open), 9-15 and 9-16-81

**LABOR DEPARTMENT**

- 41234 Labor Advisory Committee for Trade Negotiations and Trade Policy, Steering Subcommittee, Washington, D.C. (closed), 9-1-81

**HEARINGS****AGRICULTURE DEPARTMENT**

## Animal and Plant Health Inspection Service—

- 41021 Mediterranean Fruit Fly, Tampa, Fla., 9-15-81

**HEALTH AND HUMAN SERVICE DEPARTMENT**

## Food and Drug Administration—

- 41214 GRAS review of cornmint oil and psyllium seed husk gum, Bethesda, Md., 9-14-81

**VETERANS ADMINISTRATION**

- 41241 Station Committee on Educational Allowances, New York, N.Y., 9-9-81

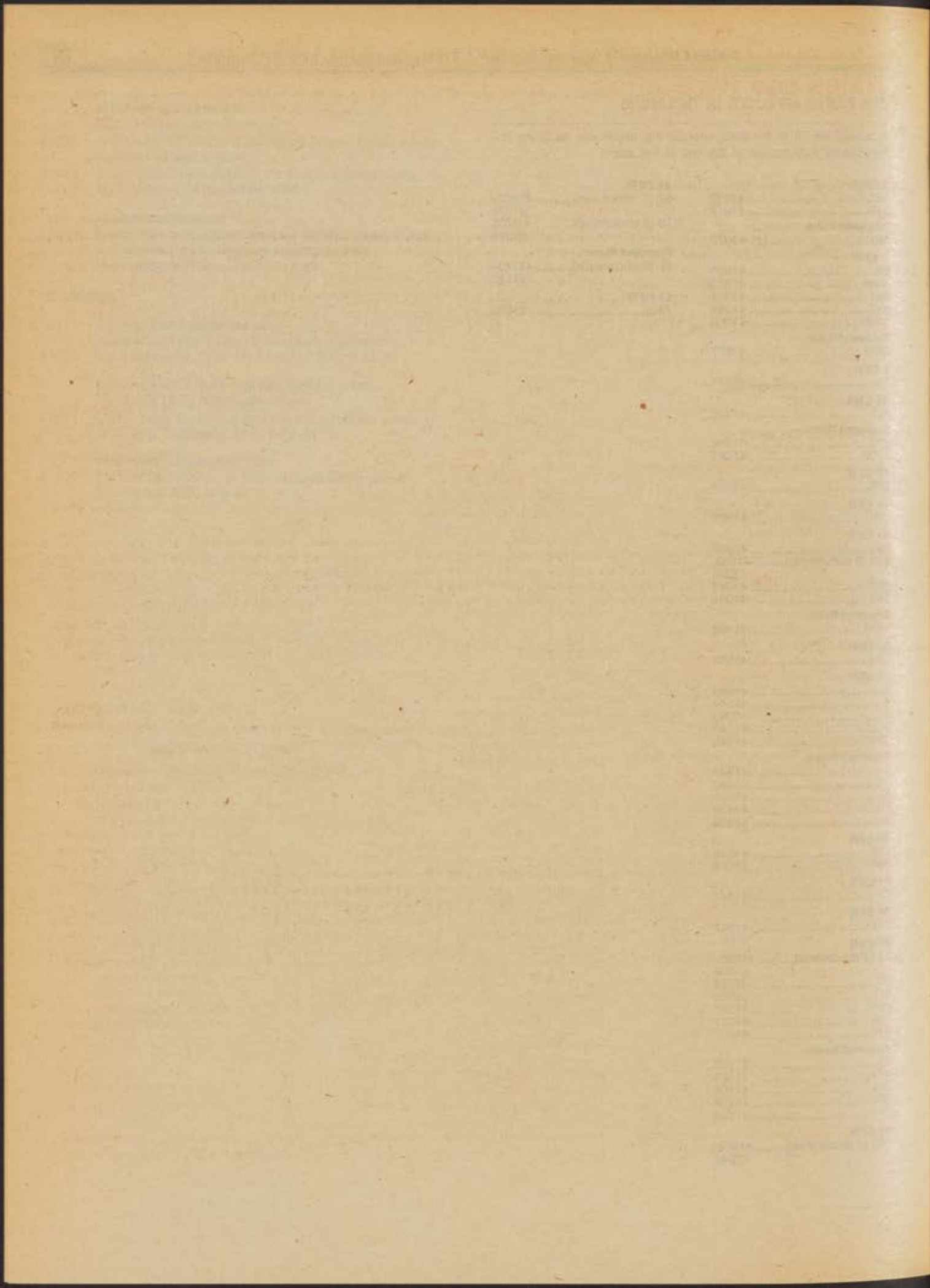


## CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

|                        |        |                        |        |
|------------------------|--------|------------------------|--------|
| <b>5 CFR</b>           |        | <b>44 CFR</b>          |        |
| 531.....               | 41019  | 67 (3 documents).....  | 41063- |
| 540.....               | 41019  |                        | 41074  |
| <b>Proposed Rules:</b> |        | 70 (2 documents).....  | 41075, |
| 531.....               | 41077  |                        | 41076  |
| <b>7 CFR</b>           |        | <b>Proposed Rules:</b> |        |
| 68.....                | 41020  | 67 (6 documents).....  | 41110- |
| 250.....               | 41472  |                        | 41121  |
| 331.....               | 41021  | <b>47 CFR</b>          |        |
| 910.....               | 41029  | 73.....                | 41076  |
| 1030.....              | 41029  |                        |        |
| <b>Proposed Rules:</b> |        |                        |        |
| 2852.....              | 41077  |                        |        |
| <b>9 CFR</b>           |        |                        |        |
| 78.....                | 41031  |                        |        |
| <b>16 CFR</b>          |        |                        |        |
| 455.....               | 41328  |                        |        |
| <b>Proposed Rules:</b> |        |                        |        |
| 460.....               | 41080  |                        |        |
| 1204.....              | 41081  |                        |        |
| <b>18 CFR</b>          |        |                        |        |
| 282.....               | 41034  |                        |        |
| <b>19 CFR</b>          |        |                        |        |
| 200.....               | 41036  |                        |        |
| <b>21 CFR</b>          |        |                        |        |
| 103.....               | 41037  |                        |        |
| 520 (3 documents)..... | 41038, |                        |        |
|                        | 41040  |                        |        |
| 522.....               | 41041  |                        |        |
| 558.....               | 41041  |                        |        |
| <b>Proposed Rules:</b> |        |                        |        |
| 1030.....              | 41102  |                        |        |
| <b>26 CFR</b>          |        |                        |        |
| 16A.....               | 41043  |                        |        |
| <b>29 CFR</b>          |        |                        |        |
| 1.....                 | 41043  |                        |        |
| 4.....                 | 41044  |                        |        |
| 5.....                 | 41043  |                        |        |
| 6.....                 | 41045  |                        |        |
| 1952.....              | 41046  |                        |        |
| <b>Proposed Rules:</b> |        |                        |        |
| 1.....                 | 41444  |                        |        |
| 4.....                 | 41380  |                        |        |
| 5.....                 | 41456  |                        |        |
| 6.....                 | 41428  |                        |        |
| 8.....                 | 41438  |                        |        |
| <b>30 CFR</b>          |        |                        |        |
| 716.....               | 41046  |                        |        |
| 785.....               | 41046  |                        |        |
| <b>31 CFR</b>          |        |                        |        |
| 51.....                | 41047  |                        |        |
| <b>39 CFR</b>          |        |                        |        |
| 111.....               | 41047  |                        |        |
| <b>40 CFR</b>          |        |                        |        |
| 52 (4 documents).....  | 41050- |                        |        |
|                        | 41054  |                        |        |
| 62.....                | 41055  |                        |        |
| 81.....                | 41056  |                        |        |
| 204.....               | 41057  |                        |        |
| 205.....               | 41057  |                        |        |
| 211.....               | 41057  |                        |        |
| <b>Proposed Rules:</b> |        |                        |        |
| 52.....                | 41103  |                        |        |
| 123.....               | 41103  |                        |        |
| 204.....               | 41104  |                        |        |
| 205.....               | 41104  |                        |        |
| 211.....               | 41104  |                        |        |
| <b>42 CFR</b>          |        |                        |        |
| 405 (2 documents)..... | 41059, |                        |        |
|                        | 41061  |                        |        |







# Rules and Regulations

Federal Register

Vol. 46, No. 157

Friday, August 14, 1981

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Parts 531 and 540

#### Pay Under the General Schedule; Merit Pay System

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** The Office of Personnel Management is amending the within-grade increase, quality step increase, and Merit Pay System regulations in order to clarify the definitions of "acceptable level of competence", "employee", and "equivalent increase" and the provisions concerning creditable service, and to make certain editorial changes. In addition, a reference contained in the Merit Pay System regulations is being corrected due to the issuance of the new within-grade increase regulations.

**EFFECTIVE DATE:** September 14, 1981.

**FOR FURTHER INFORMATION CONTACT:** Jan B. Karicher 202-632-4684.

**SUPPLEMENTARY INFORMATION:** The Office of Personnel Management published revised regulations on within-grade and quality step increases on January 9, 1981 (46 FR 6, 2317-2323), effective February 9, 1981. A correction is necessary to clarify the definitions of "acceptable level of competence", "employee", and "equivalent increase" and the provisions concerning creditable service, and to make certain editorial changes. In addition, the issuance of the final regulations has made it necessary to revise a reference to the within-grade increase regulations contained in the Merit Pay System regulations.

The Director of OPM finds good cause that the notice of proposed rulemaking usually required by 5 U.S.C. 553 is

unnecessary because these are nonsubstantive amendments that conform with the intent of existing regulations.

#### E.O. 12291, Federal Regulation

OPM has determined that this is not a major rule for the purposes of E.O. 12291, Federal Regulation, because it will not result in:

- (1) An annual effect on the economy of \$100 million or more;
- (2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- (3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

#### Regulatory Flexibility Act

The Director, Office of Personnel Management, certifies that this regulation will not have a significant economic impact on a substantial number of small entities including small business, small organizational units and small governmental jurisdictions.

Office of Personnel Management.

Beverly McCain Jones,

Issuance System Manager.

Accordingly, the Office of Personnel Management is amending 5 CFR Parts 531 and 540 as follows:

#### PART 531—PAY UNDER THE GENERAL SCHEDULE

1. The table of contents of subpart D has been revised to read as follows:

##### Subpart D—Within-Grade Increases

##### 531.411 Continuing evaluation after withholding a within-grade increase.

2. In § 531.403, the definitions of "acceptable level of competence", "employee", and "equivalent increase" have been revised to read as follows:

##### § 531.403 Definitions.

"Acceptable level of competence" means a level of performance identified by an employing agency at which the performance by an employee of the duties and responsibilities of his or her assigned position is fully acceptable (or equivalent terms such as fully

satisfactory or fully successful used in the agency's performance appraisal plan) and, in addition to the requirement of § 531.404 of this subpart, warrants advancement of the employee's rate of basic pay to the next higher step of the grade of his or her position. An employee whose current performance with respect to any critical element is unacceptable, as defined in § 430.101(a)(3) of this chapter, is not performing at an acceptable level of competence. Further, absent unusual circumstances, an employee whose overall performance during the waiting period is at the minimum level required for retention in the position but below a fully acceptable level is not performing at an acceptable level of competence.

"Employee" means an employee of an agency.

"Equivalent increase" means an increase or increases in an employee's rate of basic pay equal to or greater than the difference between the rate of pay for the General Schedule grade and step occupied by the employee and the rate of pay for the next higher step of that grade.

3. In § 531.406, paragraphs (a), (b)(1), and (c)(1) are revised to read as follows:

##### § 531.406 Creditable Service.

(a) *General.* Civil law employment in any branch of the Federal Government (executive, legislative, or judicial) or with a Government corporation as defined in section 103 of title 5, United States Code, is creditable service in the computation of a waiting period. Service credit is given during this employment for periods of annual, sick, and other leave with pay; advanced annual and sick leave; and service under a temporary or term appointment. Depending on the specific provision of law or regulation, service may be creditable for the completion of one waiting period or for the completion of successive waiting periods. Paragraph (b) of this section identifies service which is creditable in the computation of a single waiting period. Paragraph (c) identifies service which is creditable in the computation of successive waiting periods.

(b) *Service creditable for one within-grade increase.* (1) Military service as



defined in section 8331(13) of title 5, United States Code, is creditable service in the computation of a waiting period when an employee is reemployed with the Federal Government not later than 52 calendar weeks after separation from such service or hospitalization continuing thereafter for a period of not more than one year.

**(c) Service creditable for successive within-grade increases.**

(1) A leave of absence from a position in which an employee is covered by this subpart, whether the employee is on leave without pay or is considered to be on furlough, is creditable service in the computation of waiting periods for successive within-grade increases when:

(i) The employee is absent for the purpose of engaging in military service as defined in section 8331(13) of title 5, United States Code, and returns to a pay status through the exercise of a restoration right provided by law, Executive order, or regulation;

(ii) The employee is receiving injury compensation under subchapter I of chapter 81 of title 5, United States Code;

(iii) The employee is performing service that is creditable under section 8332(b) (5) or (7) of title 5, United States Code;

(iv) The employee is temporarily employed by another agency in a position covered by this subpart; or

(v) The employee is assigned to a State or local government or institution of higher education under sections 3371-3376 of title 5, United States Code.

4. In § 531.411 the section is revised to read as follows:

**§ 531.411 Continuing evaluation after withholding a within-grade increase.**

After a within-grade increase has been withheld, an agency may grant the within-grade increase at any time after it determines that the employee has demonstrated sustained performance at an acceptable level of competence. After withholding a within-grade increase, the agency, at a minimum, shall determine whether the employee's performance is at an acceptance level of competence after each 52 calendar weeks following the original due date for the within-grade increase.

5. In § 531.412, paragraph (a) is revised to read as follows:

**§ 531.412 Effective date of a within-grade increase.**

(a) Except as provided in paragraph

(b) of this section, a within-grade increase shall be effective on the first day of the first pay period following completion of the required waiting period and in compliance with the conditions of eligibility.

(5 U.S.C. 5335 and 5338; E.O. 11721, as amended, section 402)

**Subpart E—Quality Step Increases**

6. In § 531.502 the definition of "employee" is revised to read as follows:

**§ 531.502 Definitions.**

In this subpart:

"Employee" means an employee of an agency.

7. In § 531.509, paragraph (a) is revised to read as follows:

**§ 531.509 Reports and evaluation of quality step increase authority.**

(a) *Reports.* The Office of Personnel Management shall require agencies to maintain records and report, in accordance with established procedures, on the use of the authority to grant quality step increases.

(5 U.S.C. 5338 and 5338; E.O. 11721, as amended, section 403)

**PART 540—MERIT PAY SYSTEM**

8. In § 540.106, paragraph (b) is revised to read as follows:

**§ 540.106 Special provisions for merit pay increases.**

(b) An employee for whom the requirement for a merit pay determination is waived under § 540.104(h)(3) of this part because of

absences that extended for a period during which more than one merit pay increase occurred and that would be creditable service in the computation of waiting periods for successive within-grade increases under § 531.406(c) of this chapter, or because more than one merit pay increase occurred during a period for which the employee received credit under the back pay provisions of 5 U.S.C. 5596 and Subpart H of Part 550 of this chapter, shall be paid the sum of—

(1) The employee's rate of basic pay immediately before the interruption of his or her duty status;

(2) The adjustments that would have been required by 5 U.S.C. 5402 (c)(1) and (c)(3) if the employee's duty status had not been interrupted; and

(3) The average adjustments under 5 U.S.C. 5402(b) received by comparably situated employees while the employee's duty status was interrupted, as determined by the employing agency.

(5 U.S.C. 5401-5405; Pub. L. 95-454, section 504)

[PR Doc. 81-23662 Filed 8-14-81; 8:46 am]

BILLING CODE 6325-01-M

**DEPARTMENT OF AGRICULTURE**

**Federal Grain Inspection Service**

**7 CFR Part 68**

**Grades and Grade Requirements for Dockage-Free Dry Peas**

**CFR Correction**

In the 1981 volume of 7 CFR Parts 53 to 209, on pages 116 and 117, § 68.406 is corrected to read as follows:

**§ 68.406 Grades and grade requirements for dockage-free dry peas.**

(See also § 68.314.)

|                               | Maximum limits of   |                   |                           |                            |                            |            |                 |                              |                   | Minimum requirements for color |
|-------------------------------|---------------------|-------------------|---------------------------|----------------------------|----------------------------|------------|-----------------|------------------------------|-------------------|--------------------------------|
|                               | Defective Peas      |                   |                           |                            |                            |            |                 |                              |                   |                                |
|                               | Weevil-damaged peas | Heat-damaged peas | Damaged peas <sup>1</sup> | Other classes <sup>2</sup> | Bleached peas <sup>3</sup> | Split peas | Shrivelled peas | Peas with cracked seed-coats | Foreign materials |                                |
|                               | Percent             | Percent           | Percent                   | Percent                    | Percent                    | Percent    | Percent         | Percent                      | Percent           |                                |
| U.S. No. 1 <sup>4</sup> ..... | 0.3                 | 0.2               | 1.0                       | 0.3                        | 1.5                        | 0.5        | 2.0             | 3.5                          | 0.1               | Good.                          |
| U.S. No. 2 <sup>4</sup> ..... | 0.8                 | 0.5               | 1.5                       | 0.8                        | 3.0                        | 1.0        | 4.0             | 5.5                          | 0.2               | Good.                          |
| U.S. No. 3 <sup>4</sup> ..... | 1.5                 | 1.0               | 2.0                       | 1.5                        | 5.0                        | 1.5        | 6.0             | 7.5                          | 0.5               | Poor.                          |

U.S. Sample grade shall be dry peas which:

(a) Do not meet the requirements for the grades U.S. Nos. 1, 2, or 3; or

(b) Contain metal fragments, broken glass, or a commercially objectionable odor; or

(c) Contain more than 15.0 percent moisture; or

(d) Are materially weathered, heating, or distinctly low quality; or

(e) Are infested with live weevils or other live insects.<sup>5</sup>

<sup>5</sup> Uniformity of Size requirements—Dry peas of any of the numerical grades shall be of such size that not more than 3.0 percent shall pass through the appropriate oblong-hole or slotted-hole sieve as follows:



Peas  
Winter Dry Peas  
Special grade "Small" peas  
All other peas

Appropriate sieve  
No. 4 X 1/4  
1/8 X 1/4  
1/16 X 1/4

\* Damaged peas do not include weevil-damaged or heat-damaged peas.

\* These limits do not apply to the class Mixed Dry Peas.

\* These limits do not apply to winter field peas and wrinkled peas.

\* As applied to dockage-free whole dry peas, the meaning of the term "infested" is set forth in chapter 3 of Inspection Handbook HB-1.<sup>2</sup>

[39 FR 18834, May 29, 1974, as amended at 40 FR 21467, May 16, 1975]

BILLING CODE 1505-02-M

## Animal and Plant Health Inspection Service

### 7 CFR Part 331

#### Mediterranean Fruit Fly

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Emergency Rule and Notice of Public Hearing.

**SUMMARY:** Pursuant to the Federal Plant Pest Act this document establishes regulations for the purpose of restricting the interstate movement of certain articles from an area in Hillsborough County in Florida because of the Mediterranean fruit fly. This action is necessary as an emergency measure for the purpose of preventing the artificial spread of the Mediterranean fruit fly into noninfested areas of the United States. The effect of this document is to impose restrictions on the interstate movement of regulated articles from such area in Hillsborough County. A public hearing is scheduled under the Plant Quarantine Act, and a final rule quarantining Florida and establishing regulations to restrict the interstate movement of regulated articles from such area in Hillsborough County will be promulgated after the public hearing if found to be necessary to prevent the spread of the Mediterranean fruit fly.

**DATES:** Effective date: August 12, 1981. Written comments concerning the proposed quarantine and regulations must be received on or before October 13, 1981. A public hearing concerning the proposed quarantine and final regulations to be promulgated under the Plant Quarantine Act and the Federal Plant Pest Act will be held on September 15, 1981.

**ADDRESSES:** Written comments should be submitted to Thomas Lanier, Regulatory Support Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 635 Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Written comments received may be inspected at Room 635 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Hearing location: A public hearing

concerning the proposed quarantine and final regulations to be promulgated under the Plant Quarantine Act and the Federal Plant Pest Act will be held at the Curtis Hixon Convention Hall, Ybor Room, 600 Ashley Drive, Tampa, Florida.

**FOR FURTHER INFORMATION CONTACT:** Shannon Wilson, Emergency Programs Coordinator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 610 Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-6365.

#### SUPPLEMENTARY INFORMATION:

##### Executive Order 12291

This emergency rule is issued in conformance with Executive Order 12291 and Secretary's Memorandum No. 1512-1, and has been determined to be not a "major rule." Based on information compiled by the Department it has been determined that this emergency rule will have an estimated annual effect on the economy of less than \$5500; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Harvey L. Ford, Deputy Administrator of the Animal and Plant Health Inspection Service for Plant Protection and Quarantine, has determined that an emergency situation exists which warrants publication without opportunity for a public comment period on this emergency rule because of the possibility that Mediterranean fruit fly could be spread artificially to noninfested areas of the United States. This situation requires immediate action to better control the spread of this pest.

Further, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to this emergency rule are impracticable and contrary to the public interest; and good cause is found for making this emergency rule effective less than 30 days after publication of this document in the Federal Register.

In addition, because of the need for immediate action, it is impracticable for the Department to follow the procedures established by Executive Order 12291.

#### Certification Under the Regulatory Flexibility Act

Dr. H. C. Mussman, Administrator of the Animal and Plant Health Inspection Service, has determined that this action will not have a significant economic impact on a substantial number of small entities. The provisions in the rule restrict the interstate movement of specified articles from an area in Hillsborough County in Florida. There are thousands of small entities that move such articles interstate from Florida and many more thousands of small entities that move such articles interstate from other States. However, based on information compiled by the U.S. Department of Agriculture and the Florida Department of Agriculture and Consumer Services, it has been determined that fewer than 15 small entities move such articles interstate from such area in Hillsborough County. Further, the overall economic impact from this action is estimated to be less than \$5500.

#### Public Hearing

As noted above, a public hearing will be held to consider a quarantine and regulations to be published under the Plant Quarantine Act and the Federal Plant Pest Act.

A representative of the Animal and Plant Health Inspection Service will preside at the hearing. Also, at the hearing, a representative of the Animal and Plant Health Inspection Service will present a statement explaining the purpose and basis of the rule. Any interested person may appear and be heard in person, by attorney, or other representative. Also, any interested person, his attorney, or other representative will be afforded an opportunity to ask relevant questions.

The hearing will commence at 10 a.m. and end at 5 p.m., local time, unless the presiding officer otherwise specifies during the course of the hearing. Persons who wish to be heard are requested to register with the presiding officer prior to the hearing. The prehearing registration will be conducted at the location of the hearing from 9 a.m. to 10 a.m. Those registered persons will be heard in the order of their registration. However, any other person who wishes to be heard or ask questions at the hearing will be afforded such opportunity, after the registered persons have presented their views. It is requested that duplicate copies of any



written statements that are presented be provided to the presiding officer at the hearing.

If the number of preregistered persons and other participants in attendance at the hearing warrants it, the presiding officer may, if it becomes necessary, limit the time for each presentation in order to allow anyone wishing to present a statement the opportunity to be heard.

#### Background

The Mediterranean fruit fly, *Ceratitis capitata* (Wiedemann), is one of the world's most destructive pests of numerous fruits and vegetables, especially citrus fruits. It can cause serious economic losses. Heavy infestations can cause complete loss of crops, and losses of 25 to 50 percent are not uncommon. Its short life cycle permits the rapid development of serious outbreaks.

As a result of trapping surveys by inspectors of the U.S. Department of Agriculture, Mediterranean fruit flies were found in Hillsborough County in Florida on August 4 and August 9, 1981. Based on these finds it appears that an area in Hillsborough County is infested with the Mediterranean fruit fly at this time. This area is specifically described in § 331.1-3(c) and is designated as a regulated area. Otherwise the Mediterranean fruit fly is not known to occur in the United States except for infestations in California and Hawaii.

Officials of the U.S. Department of Agriculture and State agencies of Florida have begun an intensive Mediterranean fruit fly eradication program in the regulated area in Florida. Also, as further explained below, Florida has taken action to impose restrictions on the intrastate movement of certain articles from the regulated area in order to prevent the artificial spread of the Mediterranean fruit fly within Florida. However, it is also necessary to impose restrictions on the interstate movement of certain articles from the regulated area in order to prevent the artificial spread of the Mediterranean fruit fly to noninfested areas in other States. Accordingly, it is necessary as an emergency measure to establish Federal regulations for the purpose of preventing the artificial spread of the Mediterranean fruit fly.

Sections 8 and 9 of the Plant Quarantine Act (7 U.S.C. 161, 162) contain authority to implement regulations quarantining any State, Territory, or District of the United States, or any portion thereof, and prohibiting or restricting the movement of articles from such quarantined areas into or through any other State,

Territory, or District when the Secretary of Agriculture or his delegate determines, after a public hearing, that it is necessary to prevent the spread of a dangerous plant disease or insect infestation, new to or not theretofore widely prevalent or distributed within and throughout the United States. Under sections 105 and 106 of the Federal Plant Pest Act (7 U.S.C. 150dd, 150ee) there is authority for similar action without a public hearing on an emergency basis pending action under the Plant Quarantine Act. Also, under sections 105 and 106 of the Federal Plant Pest Act there is authority to take emergency measures not specified in the regulations against any product, article, or means of conveyance moving into or through the United States or interstate when there is reason to believe it is infested or infected by or contains a plant pest. Pursuant to these authorities in the Federal Plant Pest Act, this document establishes an emergency rule for the purpose of preventing the artificial spread of the Mediterranean fruit fly from the regulated area in Florida into any noninfested area in any other State, Territory, or District of the United States.

A final rule quarantining Florida and establishing regulations to restrict the interstate movement of regulated articles from the regulated area in Hillsborough County will be established under the Plant Quarantine Act after the public hearing if found to be necessary to prevent the spread of the Mediterranean fruit fly.

Under § 331.1-1 the term "State" is defined to mean "Any State, Territory, or District of the United States, including Puerto Rico." Further, § 331.1-1 defines the term "Interstate" to mean "From any State into or through any other State."

Under the regulations regulated articles are prohibited from moving interstate from regulated areas except in accordance with specified conditions.

The following products, articles, or means of conveyance, other than those articles listed in category (a) which have been canned, or frozen below -17.8° C. (0° F.), are designated in § 331.1-2 (a), (b), and (c) as regulated articles:

- (a) Akee (*Blighia sapida*)
- Almond with husk (*Prunus dulcis* [*P. amygdalus*])
- Apple (*Malus sylvestris*)
- Apricot (*Prunus armeniaca*)
- Argan tree (*Argania sideroxylon* = *A. spinosa*)
- Avocado (*Persea americana*)
- Barbados cherry, W. I. cherry (*Malpighia glabra*, & *punicifolia*)
- Bourbon orange (*Ochrosia elliptica*)
- Calamondin orange (*Citrus mitis*)

- Canistel (*Pouteria campechiana*)
- Cattley guava (*Psidium cattleianum*)
- Ceylon-gooseberry (*Dovyalis hebecarpa*)
- Chanar (*Geoffroea decorticans*)
- Cherimoya (*Annona cherimola*)
- Cherries (sweet and sour) (*Prunus avium*, *Prunus cerasus*)
- Citrus citron (*Citrus medica*)
- Coffee (*Coffea arabica*)
- Custard apple (*Annona reticulata*)
- Date (*Phoenix dactylifera*)
- Dwarf papaya (*Carica quercifolia*)
- Fig (*Ficus carica*)
- Gourka (*Carcinia xanthochymus*)
- Grape (*Vitis vinifera*)
- Grapefruit (*Citrus paradisi*)
- Guava (*Psidium guajava*)
- Hawthorne (*Crataegus* spp.)
- Hog plum (*Spondias mombin*)
- Japanese persimmon (*Diospyros kaki*)
- Japanese plum (*Prunus salicina*)
- Jocote (*Spondias purpurea*)
- Kei apple (*Dovyalis caffra*)
- Kiwi (*Actinidia chinensis*)
- Kumquat (*Fortunella japonica*)
- Lemon (*Citrus limon*) except Eureka, Lisbon, and Villa Franca cultivars (smooth-skinned sour lemon)
- Lime (*Citrus aurantiifolia*)
- Litchi (Lychee) (*Litchi chinensis*)
- Longan (*Euphorbia longana*)
- Loquat (*Eriobotrya japonica*)
- Mandarin orange (tangerine) (*Citrus reticulata*)
- Mamme, sapote (*Calocarpum sapota*)
- Mango (*Mangifera indica*)
- Mock orange (*Murraya exotica*)
- Mombin (*Spondias* spp.)
- Mountain apple (*Syzygium malaccense* [*Eugenia malaccensis*])
- Natal plum (*Carissa macrocarpa* = *C. grandiflora* and *Terminalia chebula*)
- Nectarine (*Prunus persica*)
- Olive (*Olea europea*)
- Opuntia cactus (*Opuntia* spp.)
- Papaya (*Carica papaya*)
- Passion fruit (*Passiflora edulis*)
- Peach (*Prunus persica*)
- Pear (*Pyrus communis*)
- Pepper (*Capsicum annuum* and *Capsicum frutescens*)
- Pineapple guava (*Feijoa sellowiana*)
- Plum (*Prunus americana*)
- Pomegranate (*Punica granatum*)
- Pomiform guajava (*Psidium guajava* 'Pomiform')
- Pond apple (*Annona glabra*)
- Prune (*Prunus domestica*)
- Pummelo (shaddock) (*Citrus grandis*)
- Pyriform guajava (*Psidium guajava* 'Pyriform')
- Quince (*Cydonia oblonga*)
- Rose apple (*Syzygium jambos* [*Eugenia jambos*])
- Sapodilla (*Manilkara zapota*)
- Sour orange (*Citrus aurantium*)
- Soursop (*Annona muricata*)
- Spanish cherry, Medlar (*Mimusops elengi*)
- Spanish cherry (Brazilian plum) (*Eugenia dombeyi* [*E. brasiliensis*])
- Spanish plum (*Spondias mombin*)
- Star-apple (*Chrysophyllum* spp.)
- Strawberry guava (*Psidium cattleianum*)
- Sugar apple (*Annona squamosa*)
- Sugarplum (*Arenga pinnata*)



Surinam cherry (*Eugenia uniflora*)  
 Sweet orange (*Citrus sinensis*)  
 Tomato (pink and red ripe) (*Lycopersicon  
 esculentum*)  
 Tree tomato (*Cyphomandra betacea*)  
 Tropical almond (*Terminalia catappa*)  
 Walnut with husk (*Juglans* spp.)  
 White sapote (*Casimiroa edulis*)  
 Yellow oleander (bestill) (*Thevetia  
 peruviana*);

(b) soil within the drip area of plants which produce the fruits, nuts, vegetables, or berries listed in category (a); and (c) any other product, article, or means of conveyance, of any character whatsoever, not covered in § 331.1-2 (a) or (b), when it is determined by an inspector that it presents a risk of spread of the Mediterranean fruit fly and the person in possession thereof has actual notice that the product, article, or means of conveyance is subject to the restrictions in the regulations.

Articles that are canned, or frozen below -17.8° C. (0° F.) are not included as regulated articles since the Mediterranean fruit fly could not survive under such conditions. Otherwise, based on research and experience, it appears that the articles listed in § 331.1-2 (a) and (b) as regulated articles are the articles that are likely to cause the artificial spread of the Mediterranean fruit fly. However, other products, articles, or means of conveyance could be found to present a risk of spreading the Mediterranean fruit fly. These would have to be determined by an inspector on a case-by-case basis since it cannot be anticipated which other products, articles, or means of conveyance, if any, could present such a risk. There is authority to regulate nonlisted products, articles, or means of conveyance as set forth in § 331.1-2(c) on an emergency basis under the provisions of sections 105 and 106 of the Federal Plant Pest Act. If it appears that additional products, articles, or means of conveyance generally present such a risk, amendment of this rule to include such items in the list of regulated articles will be considered.

Section 331.1-3(a) provides that the Deputy Administrator shall list as a regulated area each State, or each portion thereof, in which the Mediterranean fruit fly has been found by an inspector or in which the Deputy Administrator has reason to believe that the Mediterranean fruit fly is present, or each portion of a State which the Deputy Administrator deems necessary to regulate because of its proximity to the Mediterranean fruit fly or its inseparability for enforcement purposes from localities in which the Mediterranean fruit fly occurs.

Section 331.1-3(a) further provides that less than an entire State will be designated as a regulated area only if the Deputy Administrator determines that (1) the State has adopted and is enforcing a quarantine or regulation which imposes restrictions on the intrastate movement of the regulated articles which are substantially the same as those which are imposed with respect to the interstate movement of such articles under the emergency rule; and (2) the designation of less than the entire State as a regulated area will be adequate to prevent the artificial interstate spread of the Mediterranean fruit fly. This would not appear to lessen protection against the spread of the Mediterranean fruit fly compared to the designation of the entire State as a regulated area. It appears that such State activities would help confine infestations to the regulated areas and eliminate the need for designating larger portions of a State as regulated areas.

Only the area specifically described in § 331.1-3(c) is designated as a regulated area because of the Mediterranean fruit fly. Based on trapping surveys, it appears that the Mediterranean fruit fly occurs only in this area in Florida. Also, it appears that the State of Florida has adopted and is enforcing regulations imposing restrictions on the intrastate movement of the regulated articles which are substantially the same as those which are imposed with respect to the interstate movement of such articles under this emergency rule and there does not appear to be any reason for designation of any areas in Florida as regulated areas other than the area referred to above.

Section 331.1-3(b) provides for the temporary designation of an area as a regulated area without publication in the Federal Register for short periods of time if there is a basis for listing the area as a regulated area under § 331.1-3(a) and if the owner or person in possession thereof is given written notice of such action. This appears to be necessary in order to prevent a further artificial spread of the Mediterranean fruit fly until a document imposing such requirements could be published in the Federal Register. There is authority for these provisions under section 105 of the Federal Plant Pest Act, as discussed above.

Section 331.1-4 specifies conditions concerning the interstate movement of regulated articles from regulated areas.

Under § 331.1-4(a) a regulated article is allowed to be moved interstate from a regulated area if a certificate or limited permit were issued and attached in accordance with §§ 331.1-5 and 331.1-8.

Under Federal domestic plant quarantine programs there is a difference between the use of certificates and limited permits. Certificates are issued for articles that are eligible for unrestricted interstate movement because of absence of pest risk prior to movement. Limited permits are issued for articles that, because of a possible pest risk, may be moved interstate only subject to further restrictions, e.g., movement to limited areas, movement for limited purposes. These distinctions also apply under this emergency rule.

Section 331.1-5(a) provides that a certificate shall be issued by an inspector for the movement of a regulated article if (1) the inspector determines that there is an approved treatment as outlined in § 331.1-10, and that the article has been so treated to destroy infestation, or the inspector determines, based on inspection of the premises of origin, that it is free of the Mediterranean fruit fly; (2) the inspector determines that it is to be moved in compliance with any additional emergency conditions necessary to prevent the spread of the Mediterranean fruit fly pursuant to section 105 of the Federal Plant Pest Act; and (3) the inspector determines that it is eligible for unrestricted movement under all other Federal domestic plant quarantines and regulations applicable to such article. Based on research and field use in previous outbreaks, it appears that the treatments set forth in § 331.1-10 for certain of the regulated articles would be adequate to destroy the Mediterranean fruit fly in most cases without damage to the fruit. The Department is not aware of treatments for regulated articles which are not specified in § 331.1-10 which are adequate to destroy the Mediterranean fruit fly without damaging the regulated articles. Further, untreated regulated articles which an inspector determines are from premises free of the Mediterranean fruit fly would not likely be infested with the Mediterranean fruit fly or carry the Mediterranean fruit fly. Accordingly, compliance with the provisions in § 331.1-5(a) (including any emergency measures as explained below) appear adequate to allow the unrestricted interstate movement of regulated articles without a substantial risk of spread of the Mediterranean fruit fly.

Section 331.1-5(b) provides that a limited permit shall be issued by an inspector for the movement of a regulated article if (1) the inspector, in consultation with the Deputy Administrator, determines that it is to be



moved to a specified destination for specified handling, utilization, processing, or for treatment in accordance with § 331.1-10 (such destination and other conditions to be specified on the limited permit), when, upon evaluation of all the circumstances involved in each case, it is determined that such movement will not result in the spread of the Mediterranean fruit fly because life stages of the pest will be destroyed by such specified handling, utilization, processing or treatment; (2) the inspector determines that it is to be moved in compliance with any additional emergency conditions necessary to prevent the spread of the Mediterranean fruit fly pursuant to section 105 of the Federal Plant Pest Act; and (3) the inspector determines that it is eligible for such movement under all other Federal domestic plant quarantines and regulations applicable to such article. It appears that these criteria would be adequate to prevent the spread of the Mediterranean fruit fly by the interstate movement of such articles.

In addition, as noted above, the destination of the regulated article and other conditions for movement are to be stated on the limited permit. This would provide a record that could be checked in order to determine that the article was used in accordance with the request.

Certain determinations specified above concerning the issuance of limited permits would be required to be made by the inspector in consultation with the Deputy Administrator. This provision is designed to assure uniformity in application of the provisions relating to the issuance of limited permits.

It is anticipated that most interstate movements of regulated articles would be made pursuant to a certificate issued after treatment. This is because in most cases it would be impossible for an inspector to make a determination that a regulated article would be eligible for movement pursuant to a limited permit or pursuant to a certificate without treatment.

It is further anticipated that in most cases the imposition of emergency conditions would not be necessary for the movement of articles pursuant to certificates or limited permits. However, the imposition of any additional emergency conditions for certificates or limited permits would have to be made on a case-by-case basis, since it cannot be anticipated what additional emergency conditions might be necessary, if any. If it appears that general criteria can be developed to deal with such emergencies, amendment of the regulations governing issuance of

certificates or limited permits, as appropriate, will be considered.

The regulations in § 331.1-5(c) allow inspectors and persons engaged in the business of growing, handling, or moving regulated articles to issue certificates and limited permits. A person engaged in such a business is allowed to issue certificates and limited permits for the movement of regulated articles if the person had entered into a compliance agreement in accordance with § 331.1-6 and thereby agrees to comply with all of the requirements of the regulations.

Any such person is authorized to execute and issue a certificate for the interstate movement of a regulated article if such person has treated such regulated article to destroy infestation in accordance with the provisions in § 331.1-10 and the inspector has made the determination that such article is otherwise eligible for a certificate in accordance with § 331.1-5(a); or if the inspector has made the determination that such article is eligible for a certificate in accordance with § 331.1-5(a) without such treatment. Also, any such person is authorized to execute and issue a limited permit for the interstate movement of a regulated article if the inspector, in consultation with the Deputy Administrator, has made the determination that such article is eligible for a limited permit in accordance with § 331.1-5(b). All of the determinations under § 331.1-5 (a) and (b), other than the determinations that treatment requirements were met, are limited to inspectors because of the nature and complexity of the determinations. Further treatments will be monitored by inspectors in order to assure compliance with the treatment procedures. These provisions are designed to assure that persons issuing certificates and limited permits are knowledgeable with respect to the requirements and have agreed to comply with them. Similar systems have been successfully implemented under other Federal domestic quarantine programs.

Sections 331.1-5(d) and 331.1-6(b) contain provisions for the withdrawal or cancellation by an inspector of certificates, limited permits, and compliance agreements upon a determination that conditions for their use under the regulations have not been met. Procedural requirements concerning such withdrawals or cancellations are set forth in these sections.

Section 331.1-8(a) provides that certificates and limited permits are required at all times during the interstate movement to be securely attached to the outside of the container containing the regulated article, securely

attached to the article itself if not in a container, or securely attached to the consignee's copy of the accompanying waybill or other shipping document. However, under the provisions of § 331.1-8(a), attaching the certificate or limited permit to the consignee's copy of the accompanying waybill or other shipping document will meet the requirements of § 331.1-8(a) only if the regulated article is sufficiently described on the certificate, limited permit, or shipping document to identify such article. These requirements appear to be necessary and adequate for determinations during interstate movement concerning whether such articles are eligible for such movement.

Section 331.1-8(b) provides that the certificates or limited permit for the movement of a regulated article shall be furnished by the carrier to the consignee at the destination of the shipment. This is designed to assure the consignee that requirements for the movement of the regulated article have been met.

Section 331.1-4 also provides that regulated articles are allowed to be moved interstate from regulated areas without certificates or limited permits under certain conditions.

Under § 331.1-4(b) a regulated article may be moved to Hawaii without a certificate or limited permit if not moved through any nonregulated area. As noted above, Hawaii is infested with the Mediterranean fruit fly and it does not appear that the introduction of additional Mediterranean fruit flies would have any significant effect on the infestation in Hawaii. Also, under § 331.1-4(b) a regulated article originating from outside the regulated areas may be moved interstate through a regulated area without a certificate or limited permit if moved directly through (moved without stopping except under normal traffic conditions, such as for traffic lights or stop signs) any regulated area in an enclosed vehicle or completely enclosed by a covering adequate to prevent the introduction of the Mediterranean fruit fly (such as canvas, plastic, or closely woven cloth); if the point of origin of the article is clearly indicated by shipping documents; and if the identity of the article has been maintained. There does not appear to be a significant risk that a regulated article would become infested with the Mediterranean fruit fly or carry the Mediterranean fruit fly under the specified conditions.

Section 331.1-7(a) provides that any person (other than a person authorized to issue certificates and limited permits) who desires to move interstate a regulated article accompanied by a



certificate or limited permit shall, as far in advance as possible (should be no less than 48 hours before the desired movement), request an inspector to take any necessary action under the regulations prior to the movement of the regulated article. Section 331.1-7(b) further provides that such article shall be assembled at such point and in such manner as the inspector designates as necessary to comply with the requirements of these regulations. These provisions appear to be necessary in order for Plant Protection and Quarantine to have adequate notice to arrange for the services of an inspector and to facilitate inspections or other actions to be taken pursuant to the regulations.

Section 331.1-9 states that the services of inspector shall be furnished without cost, but that the U.S. Department of Agriculture will not be responsible for any other costs or charges incident to inspections or compliance with the provisions of the regulations. This reflects the policy of Plant Protection and Quarantine with respect to these matters based upon the funds available to the Department for such purpose.

Also, § 331.1-1 contains definitions of "Deputy Administrator," "inspector," and "Plant Protection and Quarantine." In addition, § 331.1-1 contains definitions of the terms "move" and "person" which are in accordance with provisions in the Plant Quarantine Act and the Federal Plant Pest Act.

If it is determined to be necessary to establish a final rule quarantining Florida and establishing regulations restricting the movement of regulated articles from areas in Florida, it is anticipated that the quarantine and regulations would contain the same provisions as are currently contained in the emergency rule, except that (1) language would be added to indicate the establishment of a quarantine under the Plant Quarantine Act, (2) the definition of the term "moved" which currently reflects the definition of that term in the Federal Plant Pest Act would be revised to reflect language in the Plant Quarantine Act concerning the movement of articles, and (3) footnote 1 would be changed to specify additional legal authority for certain inspections and related activities under the Plant Quarantine Act and the Federal Plant Pest Act. Additional changes could also be made based on comments.

Under the circumstances referred to above, 7 CFR Part 331 is amended by adding "Subpart—Mediterranean Fruit Fly" to read as follows:

## PART 331—PLANT PEST REGULATIONS GOVERNING INTERSTATE MOVEMENTS OF CERTAIN PRODUCTS AND ARTICLES

### Subpart—Mediterranean Fruit Fly

#### Emergency Regulations

##### Sec.

- 331.1 Notice of emergency regulations; Restrictions on interstate movement of specified articles.
- 331.1-1 Definitions.
- 331.1-2 Regulated articles.
- 331.1-3 Regulated areas.
- 331.1-4 Conditions governing the interstate movement of regulated articles from regulated areas.
- 331.1-5 Issuance and cancellation of certificates and limited permits.
- 331.1-6 Compliance agreement and cancellation thereof.
- 331.1-7 Assembly and inspection of regulated articles.
- 331.1-8 Attachment and disposition of certificates and limited permits.
- 331.1-9 Costs and charges.
- 331.1-10 Treatments.

Authority: Secs. 105 and 106, 71 Stat. 32, 71 Stat. 33; 7 U.S.C. 150dd, 150ee; 37 FR 28464, 28477, as amended; 38 FR 19141.

### Subpart—Mediterranean Fruit Fly

#### Emergency Regulations

##### § 331.1 Notice of emergency regulations; Restrictions on interstate movement of specified articles.<sup>1</sup>

(a) *Notice of emergency regulations.* Pursuant to the provisions of sections 05 and 106 of the Federal Plant Pest Act (7 U.S.C. 150dd, 150ee), the Secretary of Agriculture hereby establishes emergency regulations governing the interstate movement of regulated articles specified in § 331.1-2 from regulated areas in Florida specified in § 331.1-3(c). In order to prevent the artificial spread of the Mediterranean fruit fly *Ceratitis capitata* (Wiedemann), a dangerous insect of fruits and vegetables and not heretofore widely prevalent or distributed within and throughout the United States.

(b) *Restrictions on interstate movement of regulated articles.* No common carrier or other person shall move interstate from any regulated area any regulated article except in accordance with the conditions prescribed in this subpart.

<sup>1</sup> Any properly identified inspector is authorized to stop and inspect persons and means of conveyance, and to seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of regulated articles as provided in section 106 of the Federal Plant Pest Act (7 U.S.C. 150dd).

<sup>2</sup> Regulations concerning the movement of live Mediterranean fruit flies in interstate or foreign commerce are contained in Part 330 of this chapter.

##### § 331.1-1 Definition.

Terms used in the singular form in this subpart shall be construed as the plural and vice versa, as the case may demand. The following terms, when used in this subpart, shall be construed, respectively, to mean:

(a) *Certificate.* A document which is issued for a regulated article by an inspector or by a person operating under a compliance agreement, and which represents that such article is eligible for interstate movement in accordance with § 331.1-5(a).

(b) *Compliance agreement.* A written agreement between Plant Protection and Quarantine and a person engaged in the business of growing, handling, or moving regulated articles, wherein the person agrees to comply with the provisions of this subpart and any conditions imposed pursuant thereto.

(c) *Deputy Administrator.* The Deputy Administrator of the Animal and Plant Health Inspection Service, U.S. Department of Agriculture for Plant Protection and Quarantine, or any officer or employee of the Department to whom authority to act in his/her stead has been or may hereafter be delegated.

(d) *Inspector.* Any employee of Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, or other person, authorized by the Deputy Administrator in accordance with law to enforce the provisions of the regulations in this subpart.

(e) *Interstate.* From any State into or through any other State.

(f) *Limited permit.* A document which is issued for a regulated article by an inspector or by a person operating under a compliance agreement, and which represents that such regulated article is eligible for interstate movement in accordance with § 331.1-5(b).

(g) *Moved (movement, move).* Shipped, deposited for transmission in the mail, otherwise offered for shipment, received for transportation, carried, or otherwise transported, or moved, or allowed to be moved, by mail or otherwise.

(h) *Person.* Any individual, partnership, corporation, company, society, association, or other organized group.

(i) *Plant Protection and Quarantine.* The organizational unit within the Animal and Plant Health Inspection Service, U.S. Department of Agriculture, delegated responsibility for enforcing provisions of the Plant Quarantine Act, the Federal Plant Pest Act, and related legislation, and quarantines and regulations promulgated thereunder.



(j) *Regulated area.* Any State, or any portion thereof, listed as a regulated area in § 331.1-3(c) or otherwise designated as a regulated area in accordance with § 331.1-3(b).

(k) *Regulated article.* Any article listed in § 331.1-2(a) or (b) or otherwise designated as a regulated article in accordance with § 331.1-2(c).

(1) *State.* Any State, Territory, or District of the United States, including Puerto Rico.

#### § 331.1-2 Regulated articles.

(a) The following fruits, nuts, vegetables, and berries:

Akee (*Blighia sapida*)  
Almond with husk (*Prunus dulcis* (*P. amygdalus*))  
Apple (*Malus sylvestris*)  
Apricot (*Prunus armeniaca*)  
Argan tree (*Argania sideroxylon* = *A. spinosa*)  
Avocado (*Persea americana*)  
Barbados cherry, W.I. cherry (*Malpighia glabra*, & *punicifolia*)  
Bourbon orange (*Ochrosia elliptica*)  
Calamondin orange (*Citrus mitis*)  
Canistel (*Pouteria campechiana*)  
Cattley guava (*Psidium cattleianum*)  
Ceylon-gooseberry (*Dovyalis hebecarpa*)  
Chanar (*Geoffroea decorticans*)  
Chirimoya (*Annona cherimola*)  
Cherries (sweet and sour) (*Prunus avium*, *Prunus cerasus*)  
Citrus citron (*Citrus medica*)  
Coffee (*Coffea arabica*)  
Custard apple (*Annona reticulata*)  
Date (*Phoenix dactylifera*)  
Dwarf papaya (*Carica quercifolia*)  
Fig (*Ficus carica*)  
Gourka (*Garcinia xanthochymus*)  
Grape (*Vitis vinifera*)  
Grapefruit (*Citrus paradisi*)  
Guava (*Psidium guajava*)  
Hawthorne (*Crataegus* spp.)  
Hog plum (*Spondias mombin*)  
Japanese persimmon (*Diospyros kaki*)  
Japanese plum (*Prunus salicina*)  
Jocote (*Spondias purpurea*)  
Kei apple (*Dovyalis caffra*)  
Kiwi (*Actinidia chinensis*)  
Kumquat (*Fortunella japonica*)  
Lemon (*Citrus limon*) except Eureka, Lisbon, and Villa Franca cultivars (smooth-skinned sour lemon)  
Lime (*Citrus aurantiifolia*)  
Litchi (Lychee) (*Litchi chinensis*)  
Longan (*Euphorbia longana*)  
Loquat (*Eriobotrya japonica*)  
Mandarin orange (tangerine) (*Citrus reticulata*)  
Mammee, sapote (*Calocarpum sapota*)  
Mango (*Mangifera indica*)  
Mock orange (*Murraya exotica*)  
Mombin (*Spondias* spp.)  
Mountain apple (*Syzygium malaccense* (*Eugenia malaccensis*))  
Natal plum (*Carissa macrocarpa* = *C. grandiflora* and *Terminalia chebula*)  
Nectarine (*Prunus persica*)  
Olive (*Olea europea*)  
Opuntia cactus (*Opuntia* spp.)  
Papaya (*Carica papaya*)

Passion fruit (*Passiflora edulis*)  
Peach (*Prunus persica*)  
Pear (*Pyrus communis*)  
Pepper (*Capsicum annuum* and *Capsicum frutescens*)  
Pineapple (*Feijoa sellowiana*)  
Plum (*Prunus americana*)  
Pomegranate (*Punica granatum*)  
Pomiform guajava (*Psidium guajava* 'Pomiform')  
Pond apple (*Annona glabra*)  
Prune (*Prunus domestica*)  
Pumelo (shaddock) (*Citrus grandis*)  
Pyriform guajava (*Psidium guajava* 'Pyriform')  
Quince (*Cydonia oblonga*)  
Rose apple (*Syzygium jambos* (*Eugenia jambos*))  
Sapodilla (*Manilkara zapota*)  
Sour orange (*Citrus aurantium*)  
Soursop (*Annona muricata*)  
Spanish cherry, Medlar (*Mimusops elengi*)  
Spanish cherry (Brazilian plum) (*Eugenia dombeyi* (*E. brasiliensis*))  
Spanish plum (*Spondias mombin*)  
Star-apple (*Chrysophyllum* spp.)  
Strawberry guava (*Psidium cattleianum*)  
Sugar apple (*Annona squamosa*)  
Sugarplum (*Arenga pinnata*)  
Surinam cherry (*Eugenia uniflora*)  
Sweet orange (*Citrus sinensis*)  
Tomato (pink and red ripe) (*Lycopersicon esculentum*)  
Tree tomato (*Cyphomandra betacea*)  
Tropical almond (*Terminalia catappa*)  
Walnut with husk (*Juglans* spp.)  
White sapote (*Casimiroa edulis*)  
Yellow oleander (bestill) (*Thevetia peruviana*)

Except that the list does not include any fruits, nuts, vegetables, or berries which have been canned, or frozen below -17.8° C. (0° F.);

(b) Soil within the drip area of plants which produce the fruits, nuts, vegetables, or berries listed in paragraph (a) of this section; and

(c) Any other product, article, or means of conveyance, of any character whatsoever, not covered by paragraphs (a) or (b) of this section, when it is determined by an inspector that it presents a risk of spread of the Mediterranean fruit fly and the person in possession thereof has actual notice that the product, article, or means of conveyance is subject to the restriction of this section.

#### § 331.1-3 Regulated areas.

(a) Except as otherwise provided in paragraph (b) of this section, the Deputy Administrator shall list as a regulated area in paragraph (c) of this section, each State, or each portion thereof, in which the Mediterranean fruit fly has been found by an inspector or in which the Deputy Administrator has reason to believe that the Mediterranean fruit fly is present, or each portion of a State which the Deputy Administrator deems necessary to regulate because of its proximity to the Mediterranean fruit fly

or its inseparability for quarantine enforcement purposes from localities in which the Mediterranean fruit fly occurs. Less than an entire State will be designated as a regulated area only if the Deputy Administrator determines that:

(1) The State has adopted and is enforcing a quarantine or regulation which imposes restrictions on the intrastate movement of the regulated articles which are substantially the same as those which are imposed with respect to the interstate movement of such articles under this subpart; and

(2) The designation of less than the entire State as a regulated area will otherwise be adequate to prevent the artificial interstate spread of the Mediterranean fruit fly.

(b) The Deputy Administrator or an inspector may temporarily designate any nonregulated area in a State as a regulated area in accordance with the criteria specified in paragraph (a) of this section for listing such area. Written notice of such designation shall be given to the owner or person in possession of such nonregulated area and, thereafter, the interstate movement of any regulated articles from such area shall be subject to the applicable provisions of this subpart. As soon as practicable, such area shall be added to the list in paragraph (c) of this section or such designation shall be terminated by the Deputy Administrator or an inspector, and notice thereof shall be given to the owner or person in possession of the area.

(c) The areas described below are designated as regulated areas:

#### Florida

Hillsborough County, Township 29 South, Range 19 East, except Seddon Island and Davis Island; and the West 1/3 of Township 29 South, Range 20 East.

#### § 331.1-4 Conditions governing the interstate movement of regulated articles from regulated areas.\*

Any regulated article may be moved interstate from any regulated area only if moved under the following conditions:

(a) With a certificate or limited permit issued and attached in accordance with §§ 331.1-5 and 331.1-8 of this subpart; or

(b) Without a certificate or limited permit, if

(1) Moved to Hawaii without moving through any nonregulated area or;

(2)(i) Moved directly through (moved without stopping except under normal traffic conditions, such as for traffic

\* Requirements under all other applicable Federal domestic plant quarantines and regulations must also be met.



lights or stop signs) any regulated area in an enclosed vehicle or completely enclosed by a covering adequate to prevent the introduction of the Mediterranean fruit fly (such as canvas, plastic, or closely woven cloth);

(ii) The article originated outside of any regulated areas; and

(iii) The point of origin of the article is clearly indicated by shipping documents and its identity has been maintained.

**§ 331.1-5 Issuance and cancellation of certificates and limited permits.**

(a) A certificate shall be issued by an inspector for the movement of a regulated article if such inspector:

(1)(i) Determines that it has been treated under the direction of an inspector<sup>4</sup> in accordance with § 331.1-10; or

(ii) Determines based on inspection of the premises of origin that it is free from the Mediterranean fruit fly; and

(2) Determines that it is to be moved in compliance with any additional emergency conditions necessary to prevent the spread of the Mediterranean fruit fly pursuant to section 105 of the Federal Plant Pest Act (7 U.S.C. 150dd);<sup>5</sup> and

(3) Determines that it is eligible for unrestricted movement under all other Federal domestic plant quarantines and regulations applicable to such article.

(b) A limited permit shall be issued by an inspector for the movement of a regulated article if such inspector:

(1) Determines, in consultation with the Deputy Administrator, that it is to be moved to a specified destination for specified handling, utilization, processing, or for treatment in accordance with § 331.1-10 of this subpart (such destination and other conditions to be specified on the limited permit), when, upon evaluation of all of the circumstances involved in each case, it is determined that such movement will not result in the spread of the Mediterranean fruit fly because life stages of the pest will be destroyed by

such specified handling, utilization, processing, or treatment;

(2) Determines that it is to be moved in compliance with any additional emergency conditions necessary to prevent the spread of the Mediterranean fruit fly pursuant to section 105 of the Federal Plant Pest Act (7 U.S.C. 150dd); and

(3) Determines that it is eligible for such movement under all other Federal domestic plant quarantines and regulations applicable to such article.

(c) Certificates and limited permits for use for shipments of regulated articles may be issued by an inspector or any person engaged in the business of growing, handling, or moving regulated articles provided such person is operating under a compliance agreement. Any such person may execute and issue a certificate for the interstate movement of a regulated article if such person has treated such regulated article to destroy infestation in accordance with the provisions in § 331.1-10 and the inspector has made the determination that such article is otherwise eligible for a certificate in accordance with paragraph (a) of this section; or if the inspector has made the determination that such article is eligible for a certificate in accordance with paragraph (a) of this section without such treatment. Any such person may execute and issue a limited permit for interstate movement of a regulated article when the inspector has made the determination that such article is eligible for a limited permit in accordance with paragraph (b) of this section.

(d) Any certificate or limited permit which has been issued or authorized may be withdrawn by an inspector if such inspector determines that the holder thereof has not complied with any condition under the regulations for the use of such document. The reasons for the withdrawal shall be confirmed in writing as promptly as circumstances permit. Any person whose certificate or limited permit has been withdrawn may appeal the decision in writing to the Deputy Administrator within ten (10) days after receiving the written notification of the withdrawal. The appeal shall state all of the facts and reasons upon which the person relies to show that the certificate or limited permit was wrongfully withdrawn. The Deputy Administrator shall grant or deny the appeal, in writing, stating the reasons for such decision, as promptly as circumstances permit. If there is a conflict as to any material fact, a hearing shall be held to resolve such conflict.

**§ 331.1-6 Compliance agreement and cancellation thereof.**

(a) Any person engaged in the business of growing, handling, or moving regulated articles may enter into a compliance agreement to facilitate the movement of regulated articles under this subpart.<sup>6</sup> The compliance agreement shall be a written agreement between a person engaged in such a business and Plant Protection and Quarantine, wherein the person agrees to comply with the provisions of this subpart and any conditions imposed pursuant thereto.

(b) Any compliance agreement may be canceled orally or in writing by the inspector who is supervising its enforcement whenever the inspector finds that such person has failed to comply with the provisions of this subpart or any conditions imposed pursuant thereto. If the cancellation is oral, the decision and the reasons therefor shall be confirmed in writing, as promptly as circumstances permit. Any person whose compliance agreement has been canceled may appeal the decision, in writing, to the Deputy Administrator within ten (10) days after receiving written notification of the cancellation. The appeal shall state all of the facts and reasons upon which the person relies to show that the compliance agreement was wrongfully canceled. The Deputy Administrator shall grant or deny the appeal, in writing, stating the reasons for such decision, as promptly as circumstances permit. If there is a conflict as to any material fact, a hearing shall be held to resolve such conflict.

**§ 331.1-7 Assembly and inspection of regulated articles.**

(a) Any person (other than a person authorized to issue certificates or limited permits under § 331.1-5(c) of this subpart), who desires to move interstate a regulated article accompanied by a certificate or limited permit shall, as far in advance as possible (should be no less than 48 hours before the desired movement), request an inspector<sup>7</sup> to take any necessary action under this

<sup>4</sup> Treatments shall be monitored by inspectors in order to assure compliance with requirements in this subpart.

<sup>5</sup> Section 105 of the Federal Plant Pest Act (7 U.S.C. 150dd) provides, among other things, that the Secretary of Agriculture may, whenever he deems it necessary as an emergency measure in order to prevent the dissemination of any plant pest new to or not theretofore known to be widely prevalent or distributed within and throughout the United States seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of, in such manner as he deems appropriate, any product or article of any character whatsoever, or means or conveyance, which is moving into or through the United States or interstate, and which he has reason to believe is infested or infected by or contains any such plant pest.

<sup>6</sup> Compliance Agreement forms are available without charge from the Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, Federal Building, Hyattsville, MD 20782, and from local offices of the Plant Protection and Quarantine. (Local offices are listed in telephone directories.)

<sup>7</sup> Inspectors are assigned to local offices of Plant Protection and Quarantine which are listed in telephone directories. Information concerning such local offices may also be obtained from the Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, Federal Building, Hyattsville, MD 20782.



subpart prior to movement of the regulated article.

(b) Such article shall be assembled at such point and in such manner as the inspector designates as necessary to comply with the requirements of this subpart.

#### § 331.1-8 Attachment and disposition of certificates and limited permits.

(a) A certificate or limited permit required for the interstate movement of a regulated article, at all times during such movement, shall be securely attached to the outside of the container containing the regulated article, securely attached to the article itself if not in a container, or securely attached to the consignee's copy of the accompanying waybill or other shipping document; *Provided however*, that the requirements of this section may be met by attaching the certificate or limited permit to the consignee's copy of the waybill or other shipping document only if the regulated article is sufficiently described on the certificate, limited permit, or shipping document to identify such article.

(b) The certificate or limited permit for the movement of a regulated article shall be furnished by the carrier to the consignee at the destination of the shipment.

#### § 331.1-9 Costs and charges.

The services of the inspector shall be furnished without cost. The U.S. Department of Agriculture will not be responsible for any costs or charges incident to inspections or compliance with the provisions in this subpart, other than for the services of the inspector.

#### § 331.1-10 Treatments.

Treatment for regulated articles shall be as follows:

##### (a) Avocado:

Fumigation with methyl bromide at normal atmospheric pressure with 32 g/m<sup>3</sup> for 2½ hours at 21° C. (70° F.) or above followed by refrigeration for 7 days at 7.22° C. (45° F.) or below. The 7 day period may include up to 24 hours precooling time. Time between fumigation and start of cooling not to exceed 24 hours, but must include at least 30 minutes aeration.

(b) Calamondin orange, citrus citron, grapefruit, kumquat, lemon, lime, mandarin orange (tangerine), orange, and pummelo:

Fumigation with ethylene dibromide (EDB) at normal atmospheric pressure.

Dosage as follows:

| Fruit load in chamber           | Dosage of EDB in grams per cubic meter for 2 hrs. |                                   |
|---------------------------------|---------------------------------------------------|-----------------------------------|
|                                 | 15.5°-20.5° C. (60°-69° F.)                       | 21° C. or above (70° F. or above) |
| 25% or less                     | 10                                                | 8                                 |
| More than 25% but less than 50% | 12                                                | 10                                |
| 50% or more                     | 14                                                | 12                                |

Required post-treatment aeration: Forced circulation in the fumigation chamber for ½ hour following treatment and then placed in a well ventilated area.

##### (c) Tomato:

Fumigation with methyl bromide at normal atmospheric pressure with 32g/m<sup>3</sup> for 3½ hours at 21° C. (70° F.) or above.

##### (d) Bell pepper and tomato:

Heat the article by saturated water vapor at 44.44° C. (112° F.) until approximate center of article reaches 44.44° C. (112° F.), and maintain at 44.44° C. (112° F.) for 8½ hours, then immediately cool.

*Note.*—Commodities should be tested by the shipper at the 44.44° C. (112° F.) temperature to determine each commodity's tolerance to the treatment before commercial treatments are attempted. Pretreatment conditioning is optional. Such conditioning is the responsibility of the shipper and would be conducted in accordance with procedures the shipper believes necessary. It is common to perform pretreatment conditioning.

##### (e) Apple, apricot, cherry, grape, peach, pear, and plum:

Fumigation with 32 g/m<sup>3</sup> methyl bromide at 21° C. (70° F.) or above (chamber load not to exceed 80 percent of volume), and at normal atmospheric pressure, followed by refrigeration, as set forth below.

| Fumigation exposure time | Refrigeration                                                                                                              |
|--------------------------|----------------------------------------------------------------------------------------------------------------------------|
| 2 hours                  | 4 days at 0.55°-2.7° C. (33°-37° F.); or 11 days at 3.33°-8.3° C. (38°-47° F.)                                             |
| 2½ hours                 | 4 days at 1.11°-4.44° C. (38°-40° F.); or 6 days at 5.0°-8.33° C. (41°-47° F.); or 10 days at 8.88°-13.33° C. (48°-56° F.) |
| 3 hours                  | 3 days at 6.11°-8.33° C. (43°-47° F.); or 6 days at 8.88°-13.33° C. (48°-56° F.)                                           |

Minimum concentrations for above fumigations.

(25 g minimum gas concentration at ½ hr.)

(18 g minimum gas concentration at 2 or 2½ hrs.)

(17 g minimum gas concentration at 3 hrs.)

Aerate all fruit at least 2 hours following fumigation. Time lapse

between fumigation and start of cooling not to exceed 24 hours.

*Note.*—Some varieties of fruit may be injured by the 3-hour exposure. Shippers should test treat before making commercial shipments.

(f) Bell peppers: Fumigation with methyl bromide at normal atmospheric pressure with 32 g/m<sup>3</sup> for 3½ hours at 21° C. (70° F.) or above.

*Note.*—Bell peppers have been found marginally tolerant to methyl bromide fumigation. Shelf life after treatment is reduced to between 5 to 7 days. Injury may appear as pitting on the skin of the pepper, darkening of the seed and placental material, and internal decay resulting from killing the stem and calyx.

(g) Apple, apricot, Calamondin orange, cherry, citrus citron, grape, grapefruit, kiwi, mandarin orange, nectarine, peach, pear, plum, prune, sour orange, and sweet orange:

Cold treat the article according to one of the following:

- 10 days at 0° C. (32° F.) or below
- 11 days at 0.55° C. (33° F.) or below
- 12 days at 1.11° C. (34° F.) or below
- 14 days at 1.66° C. (35° F.) or below
- 16 days at 2.22° C. (36° F.) or below.

(h) Almond with husk, grape, kiwi, opuntia cactus, and walnut with husk.

Fumigation with methyl bromide at normal atmospheric pressure with 32g/m<sup>3</sup> for 3½ hours at 21° C. (70° F.) or above.

Minimum concentration for above fumigations:

- 26 g minimum gas concentration at first ½ hour
- 22 g minimum gas concentration at 2 or 2½ hours
- 21 g minimum gas concentration at 3½ hours.

##### (i) Grape:

Fumigation with methyl bromide at normal atmospheric pressure with 32g/m<sup>3</sup> for 4 hours at 18° C. (65° F.) or above.

Minimum concentration for above fumigations:

- 26 g minimum gas concentration at first ½ hour
- 22 g minimum gas concentration at 2 or 2½ hours
- 19 g minimum gas concentration at 4 hours.

##### (j) Litchi:

Fumigation with ethylene dibromide (EDB) at normal atmospheric pressure with 8g/m<sup>3</sup> for 2 hours at 21° C. (70° F.) or above. Required post-treatment aeration: Forced circulation in the fumigation chamber for ½ hour following treatment and then placed in a well ventilated area.



Done at Washington, D.C. this 12th day of August 1981.

William F. Helms,

Acting Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[PR Doc. 81-33007 Filed 8-13-81; 12:29 pm]

BILLING CODE 3410-34-M

## Agricultural Marketing Service

### 7 CFR Part 910

[Lemon Reg. 318]

#### Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

**SUMMARY:** This regulation establishes the quantity of fresh California-Arizona lemons that may be shipped to market during the period August 16-22, 1981. Such action is needed to provide for orderly marketing of fresh lemons for this period due to the marketing situation confronting the lemon industry.

**EFFECTIVE DATE:** August 16, 1981.

**FOR FURTHER INFORMATION CONTACT:** William J. Doyle, 202-447-5975.

**SUPPLEMENTARY INFORMATION:** *Findings.* This rule has been reviewed under Secretary's Memorandum 1512-1 and Executive Order 12291 and has been designated a "non-major" rule. This regulation is issued under the marketing agreement, as amended, and Order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). The action is based upon the recommendations and information submitted by the Lemon Administrative Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy for 1981-82. The marketing policy was recommended by the committee following discussion at a public meeting on July 7, 1981. A regulatory impact analysis on the marketing policy is available from William J. Doyle, Acting Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202-447-5975.

The committee met again publicly on August 11, 1981, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of lemons deemed advisable to be handled

during the specified week. The committee reports the demand for lemons is easier.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the Federal Register (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

Information collection requirements (reporting or record keeping) under this part are subject to clearance by the Office of Management and Budget and are in the process of review. These information requirements shall not become effective until such time as clearance by the OMB has been obtained.

Section 910.618 is added as follows:

#### § 910.618 Lemon regulation 318.

The quantity of lemons grown in California and Arizona which may be handled during the period August 16, 1981, through August 22, 1981, is established at 225,000 cartons.

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Dated: August 12, 1981.

James B. Wendland,

Acting Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[PR Doc. 81-33070 Filed 8-13-81; 8:45 am]

BILLING CODE 3410-02-M

### 7 CFR Part 1030

#### Milk in the Chicago Regional Marketing Area; Temporary Revision of Shipping Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Temporary revision of rules.

**SUMMARY:** This action temporarily relaxes the shipping requirements for pool supply plants under the Chicago Regional milk order for the months of September, October and November 1981 to prevent uneconomic shipments of milk to the market and to maintain the pool status of producers who regularly

supply the market. The revisions are made in response to requests of cooperative associations of producers supplying the market.

**EFFECTIVE DATE:** September 1, 1981.

**FOR FURTHER INFORMATION CONTACT:** Martin J. Dunn, Marketing Specialist, Dairy Division, United States Department of Agriculture, Washington, D.C. 20250, 202-447-7311.

**SUPPLEMENTARY INFORMATION:** Prior document in this proceeding:

Proposed temporary revision of shipping percentages; issued July 13, 1981; published July 17, 1981 (46 FR 37055).

This action has been reviewed under USDA procedures established to implement Executive Order 12291 and has been classified "not significant" and, therefore, not a major action.

Also, it has been determined that the need for adjusting certain provisions of the order on an emergency basis precludes following certain review procedures set forth in Executive Order 12291. Such procedures would require that this document be submitted for review to the Office of Management and Budget at least 10 days prior to its publication in the Federal Register. However, this would not permit the completion of the procedure in time to give interested parties timely notice that supply plant shipping requirements for September 1981 would be modified. The initial request for the action was received on June 26, 1981.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has determined that this action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to assure that the market would be adequately supplied with milk for fluid use with a smaller proportion of milk shipments from pool supply plants.

This temporary revision is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the provisions of § 1030.7(b)(5) of the Chicago Regional milk order.

Notice of proposed rulemaking was published in the Federal Register (46 FR 37055) concerning a proposed decrease in the shipping requirements for pool supply plants for the months of September, October, and November 1981. The public was afforded the opportunity to comment on the proposal by submitting written data, views and arguments. Three comments were received in favor of the proposed



reduction. One comment from a proprietary handler opposed the proposal and offered a modification of the proposal. One comment was received from a dairy farmer.

After consideration of all relevant material, including the proposal set forth in the aforesaid notice, data, views, and arguments filed, and other available information, it is hereby found and determined that for the months of September, October and November 1981 the supply plant shipping percentages should be lowered as follows:

| Month     | Percentage |           |              |
|-----------|------------|-----------|--------------|
|           | Present    | Temporary | Point change |
| September | 30         | 22.5      | 7.5          |
| October   | 35         | 25        | 10           |
| November  | 35         | 25        | 10           |

Pursuant to the provisions of § 1030.7(b)(5) the supply plant shipping percentages set forth in § 1030.7(b) may be increased or decreased by up to 10 percentage points during the months of September through March to encourage additional milk shipments to pool distributing plants or to remove the need for milk shipments to such plants merely to qualify a supply plant for pooling under the order.

The Central Milk Sales Agency, which represents six cooperative associations whose members provide the majority of producer milk associated with the market, requested that the supply plant shipping percentages be decreased by 10 percentage points to 20 percent for September and 25 percent for October and November. The Agency estimated that producer milk receipts during the fall period are expected to be approximately 10 percent over last year. The Agency indicated that some milk previously associated with other markets would be pooled under the Chicago order beginning in September. The Agency estimated that producer milk receipts by Agency members in September 1981 will be 504.5 million pounds or 9.7 percent over September 1980 receipts. Likewise for October and November the Agency estimated receipts of 505.7 and 482.0 million pounds respectively, or 9.9 percent and 10.8 percent increase over a year earlier. The Agency estimated that the qualifying shipments for September 1981 will amount to 133.4 million pounds, or 26.4 percent of their receipts. For October the shipments are projected to be 146.1 million pounds or 28.9 percent of receipts. The November shipments are projected to be 134.4 million pounds or 27.9 percent of receipts.

The Agency stated also that the expected Class I sales will be under those of one year ago. The Agency concluded that with increased supplies and decreased sales, a reduction in the shipping percentages of supply plants is warranted to prevent uneconomic and inefficient movements of milk solely for the purpose of qualification of the supply plants.

A proprietary handler commented that dry weather affects milk production. He said that milk should be readily available for bottling without the payment of premiums if production suddenly dropped. He said that if production decreased, the Director should readjust the shipping percentage promptly.

A handler who operates several pool plants opposed a full 10 percent point reduction for each month and proposed that any reduction be limited to 5 percentage points each month. The spokesman for this handler indicated that its producer receipts would not be 10 percent greater than last year. He also noted the effect that a shortage of milk in the southern part of the country could have on the availability of milk supplies for Chicago Regional distributing plant handlers. This spokesman expressed concern about the availability of milk for fluid use if the supply plant shipping requirements were reduced.

For the first six months of 1981, producer milk receipts for the market were 6.9 percent greater than for the same months last year while pounds of pooled Class I milk were 1.1 percent less than for the comparable period last year. From the market data available, it is estimated that for the months of September through November, producer milk will be about 7.8 percent greater than for the same period last year and the volume of pooled Class I milk for the market will average 1.5 percent less than last year.

It is concluded from these data that producer milk supplies for the market, currently and prospectively, are increasing substantially more than Class I sales, and that consideration for lowering the supply plant shipping percentages temporarily is warranted.

The projected total receipts of milk from producers for September, October and November 1981 are expected to be 997 million pounds, 999 million pounds and 935 million pounds, respectively. Of the total producer milk receipts in the market, 957 million, 962 million and 901 million pounds, respectively, are projected to be received at supply plants. Thus, the remaining 40 million pounds of producer milk in September, the 37 million pounds in October and the

34 million pounds in November will be received at pool distributing plants directly from producers. The projected volume of pooled Class I sales is anticipated to be 255 million, 264 million and 240 million pounds, respectively.

At a 30 percent shipping percentage as now provided for September, the qualifying shipments from supply plants would be 287 million pounds. For October and November, at a 35 percent shipping percentage, the qualifying shipments from supply plants would be 337 million and 315 million pounds, respectively. Thus at the present shipping percentages the volume of uneconomic shipments from supply plants would approach 72 million pounds in September, 110 million pounds in October and 109 million pounds in November.

By reducing the supply plant shipping percentage by the requested 10 percentage points to 20 percent in September, about 191 million pounds would be required for qualifying shipments from supply plants. With projected Class I use at 255 million pounds, the difference is substantially greater than the 40 million pounds of expected direct-shipped milk. Thus a 20 percent shipping standard for September would be too low to assure that distributing plants would have adequate supplies of milk for fluid use.

At a 22.5 percent shipping percentage for September, qualifying shipments from supply plants would be about 215 million pounds. At this level of shipments distributing plants should be adequately supplied for September because the difference between the shipments from supply plants and anticipated Class I use could be made up from direct-shipped milk.

For October and November, if the supply plant shipping percentage is reduced to 25 percent each month, the required amount of supply plant milk would be 241 million and 225 million pounds, respectively. With projected Class I sales at 264 million and 240 million pounds, respectively, the balance each month could be made up from direct-shipped milk.

On the basis of available information, it is concluded that the supply plant shipping percentages should be reduced to 22.5 percent for the months of September and to 25 percent for the month of October and November 1981. Providing the reduction for all three months at this time on the basis of current information will afford all parties adequate knowledge for adjusting operations accordingly. Should a change occur in the projections for October or November, consideration



could be given to increasing the percentages if distributing plants are not being adequately supplied.

The proposed reduction as requested by the Agency was supported through comments by another cooperative association supplying the market, by a trade association of 20 proprietary milk supply plants regulated by the order, and by a proprietary handler regulated by the order.

Another proprietary handler opposed the full request. He maintained that an adequate supply of milk would not be available for distributing plant handlers with the full 10 percentage points reduction and proposed a 5 percentage point reduction in the supply plant shipping percentages.

The shipping percentage reductions are aimed at facilitating the delivery of milk to the market from supply plants for Class I use without requiring uneconomic shipments merely for pooling purposes. It is concluded that the supply-demand conditions in the market warrant a lowering of the shipping requirements, as set forth above, and a temporary basis.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary, and contrary to the public interest in that:

(a) This temporary revision is necessary to reflect current marketing conditions and to maintain orderly marketing conditions in the marketing area for the months of September, October and November, 1981;

(b) This temporary revision does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of the proposed temporary revision was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this temporary revision.

Therefore, good cause exists for making this temporary revision effective September 1, 1981.

*It is therefore ordered.* That the aforesaid provisions of the order are hereby revised for the months of September, October and November 1981.

(Secs. 1-19, 48 Stat. 31, as amended (7 U.S.C. 601-674))

Effective Date: September 1, 1981.

Signed at Washington, D.C. on: August 10, 1981.

H. L. Forest,  
Director, Dairy Division.

(PR Doc. 81-22654 Filed 8-13-81; 8:45 am)

BILLING CODE 3410-02-M

## Animal and Plant Health Inspection Service

### 9 CFR Part 78

#### Brucellosis Areas

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** These amendments add the county of Franklin in Idaho, and the county of Garfield in Utah, to the list of Certified Brucellosis-Free Areas and delete these counties from the list of Modified Certified Brucellosis Areas. It has been determined that these areas qualify to be designated as Certified Brucellosis-Free Areas. The effect of this action will allow for less restrictions on cattle moved interstate from these areas. These amendments also add the counties of Seminole in Florida, and Fannin, Franklin, and Habersham in Georgia, and Hansford in Texas, to the list of Modified Certified Brucellosis Areas and deletes them from the list of Certified Brucellosis-Free Areas because it has been determined that these counties now qualify only as Modified Certified Brucellosis Areas. The effect of this action will provide for more restrictions on cattle moved interstate from these areas.

**EFFECTIVE DATE:** August 14, 1981.

**FOR FURTHER INFORMATION CONTACT:** Dr. A. D. Robb, USDA, APHIS, VS, Room 805, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-5961.

#### SUPPLEMENTARY INFORMATION:

#### Executive Order 12291 and Emergency Action

This final action is issued in conformance with Executive Order 12291 and has been determined to be not a "major rule." Based on information compiled by the Department, it has been determined that this action would have an annual effect on the economy of less than one hundred million dollars; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; would not have a significant adverse effect on competition, employment or investment, productivity, innovation, or the ability of United States based enterprises to compete with foreign based enterprises in domestic or export markets. The emergency nature of this action makes it impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule.

Dr. Paul Becton, Director, National Brucellosis Eradication Program, USDA,

APHIS, VS, has determined that an emergency situation exists which warrants publication without opportunity for a public comment period on this final action. The amendment designating areas as Certified Brucellosis-Free Areas relieves certain restrictions presently imposed on the interstate movement of cattle. These restrictions are no longer deemed necessary to prevent the spread of brucellosis from such areas. Therefore, the amendment should be made effective immediately in order to permit affected persons to move cattle interstate from such areas without unnecessary restrictions. Additionally, the areas are qualified on the basis of criteria. If the criteria for a Modified Certified Brucellosis Area is exceeded and the criteria for a Certified Brucellosis-Free Area is met, there is no other alternative than to call it a Certified Brucellosis-Free Area.

The amendment designating areas as Modified Certified Brucellosis Areas imposes restrictions presently not imposed on the interstate movement of cattle from these areas. The additional restrictions are necessary in order to prevent the spread of brucellosis from such areas and, therefore, must be made effective immediately. There are no other alternatives under the laws that would prevent the spread of brucellosis. Additionally, the areas are qualified on the basis of criteria. If the criteria for a Certified Brucellosis-Free Areas is not met, and the criteria for a Modified Certified Brucellosis Area is met, there is no other alternative than to call it a Modified Certified Brucellosis Area.

Further, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to this final rule are impracticable and contrary to the public interest and good cause is found for making this final rule effective less than 30 days after publication of this document in the Federal Register.

#### Certification Under the Regulatory Flexibility Act

Dr. Harry C. Mussman, Administrator and of the Animal and Plant Health Inspection Service, has determined that this action will not have a significant economic impact on a substantial number of small entities because the change in brucellosis status affects less than 0.07 percent of the farms in the United States and does not have a significant economic impact on a substantial number of other types of small entities.



These amendments add the county of Franklin in Idaho and the county of Garfield in Utah to the list of Certified Brucellosis-Free Areas in § 78.20 and delete these counties from the list of Modified Certified Brucellosis Areas in § 78.21 because it has been determined that they now qualify as Certified Brucellosis-Free Areas as defined in § 78.1(l) of the regulations.

These amendments add the county of Seminole in Florida, and the counties of Fannin, Franklin, and Habersham in Georgia and the county of Hansford in Texas, to the list of Modified Certified Brucellosis Areas in § 78.21 and delete these counties from the list of Certified Brucellosis-Free Areas in § 78.20, because it has been determined that they now qualify only as Modified Certified Brucellosis Areas as defined in § 78.1(m) of the regulations.

A complete list of brucellosis areas was last published in the *Federal Register* (45 FR 8571-85720) effective December 30, 1980. This document includes a complete list of brucellosis areas and reflects all actions taken to date under the criteria for designating such areas. Accordingly, Part 78, Title 9, Code of Federal Regulations, is hereby amended in the following respects:

1. The authority citation for Part 78 reads as follows:

**Authority:** Secs. 4-7 and 13 of the Act of May 29, 1884, as amended, 23 Stat. 32; secs. 1 and 2 of the Act of February 2, 1903, as amended, 32 Stat. 791-792; sec. 3 of the Act of March 3, 1905, as amended, 33 Stat. 1265; and secs. 3 and 11, P.L. 87-518, 76 Stat. 130, 132 (21 U.S.C. 111-113, 114a-1, 115, 117, 120, 121, 125, 134b, 134f); 37 FR 28464; 28477; 38 FR 19141, unless otherwise noted.

2. § 78.20 is revised to read as follows:

**§ 78.20 Certified brucellosis-free areas.**

The following States, or specified portions thereof, are hereby designated as Certified Brucellosis-Free Areas:

(a) *Entire States.*

Arizona, California, Colorado, Connecticut, Delaware, Hawaii, Iowa, Indiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nevada, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, Washington, West Virginia, Wisconsin, Wyoming, Virgin Islands.

(b) *Specific Counties Within States.*

*Alabama.* Dale, Geneva.

*Alaska.* All of Alaska except the Aleutian Islands below 56° latitude.

*Arkansas.* Baxter, Bradley, Columbia, Crittenden, Dallas, Drew, Fulton, Garland, Grant, Jefferson, Marion,

Monroe, Montgomery, Newton, Ouachita, Stone, Union, Woodruff.

*Florida.* Baker, Bay, Calhoun, Citrus, Dixie, Franklin, Gadsden, Holmes, Jackson, Leon, Liberty, Monroe, Okaloosa, Santa Rosa, St. Johns, Taylor, Wakulla, Walton.

*Georgia.* Appling, Atkinson, Bacon, Brantley, Bryan, Bulloch, Burke, Butts, Camden, Candler, Charlton, Chatham, Chattahoochee, Clarke, Clayton, Cook, Crawford, De Kalb, Effingham, Evans, Glascock, Glynn, Greene, Jeff Davis, Johnson, Lanier, Laurens, Liberty, Long, McIntosh, Monroe, Peach, Richmond, Screven, Taylor, Toombs, Treutlen, Twiggs, Upson, Ware, Wayne, Wheeler, White, Wilkinson.

*Idaho.* Ada, Adams, Bannock, Bear Lake, Benewah, Bingham, Blaine, Boise, Bonner, Bonneville, Boundary, Butte, Camas, Canyon, Caribou, Clark, Clearwater, Custer, Elmore, Franklin, Gem, Idaho, Kootenai, Latah, Lemhi, Lewis, Lincoln, Minidoka, Nez Perce, Owyhee, Payette, Power, Shoshone, Teton, Valley, Washington.

*Illinois.* Adams, Alexander, Bond, Boone, Brown, Bureau, Calhoun, Carroll, Cass, Champaign, Christian, Clark, Clay, Clinton, Coles, Cook, Crawford, Cumberland, DeKalb, DeWitt, Douglas, Du Page, Edgar, Edwards, Effingham, Fayette, Ford, Franklin, Fulton, Gallatin, Greene, Grundy, Hamilton, Hancock, Hardin, Henderson, Henry, Iroquois, Jackson, Jasper, Jefferson, Jersey, Johnson, Kane, Kankakee, Kendall, Knox, Lake, La Salle, Lawrence, Lee, Livingston, Logan, Macon, Macoupin, Madison, Marion, Marshall, Mason, Massac, McDonough, McHenry, McLean, Menard, Mercer, Monroe, Montgomery, Morgan, Moultrie, Ogle, Peoria, Perry, Piatt, Pike, Pope, Pulaski, Putnam, Randolph, Richland, Rock Island, St. Clair, Saline, Sangamon, Schuyler, Scott, Shelby, Stark, Stephenson, Tazewell, Union, Vermilion, Wabash, Warren, Washington, Wayne, White, Whiteside, Will, Williamson, Winnebago, Woodford.

*Kansas.* Anderson, Barber, Bourbon, Brown, Chase, Chautauqua, Cherokee, Cheyenne, Clark, Clay, Coffey, Comanche, Crawford, Decatur, Dickinson, Doniphan, Douglas, Edwards, Ellsworth, Finney, Ford, Geary, Gove, Graham, Grant, Gray, Greeley, Hamilton, Harvey, Haskell, Hodgeman, Jewell, Johnson, Kearney, Kingman, Kiowa, Labette, Lane, Leavenworth, Lincoln, Logan, Marion, Marshall, Meade, Miami, Mitchell, Ness, Norton, Osage, Osborne, Pawnee, Phillips, Pottawatomie, Pratt, Rawlins, Republic, Riley, Rooks, Rush, Saline, Scott, Seward, Shawnee, Sheridan, Sherman, Smith, Stanton, Stevens, Sumner,

Thomas, Trego, Wabaunsee, Wallace, Washington, Wichita, Wilson, Woodson, Wyandotte.

*Kentucky.* Bell, Breathitt, Campbell, Clay, Floyd, Harlan, Johnson, Kenton, Knott, Knox, Lawrence, Lee, Leslie, Letcher, Lewis, Magoffin, Martin, McCreary, Menifee, Morgan, Owsley, Pendleton, Perry, Pike, Robertson, Trimble, Whitley, Wolfe.

*Mississippi.* Harrison.

*Missouri.* Audrain, Dunklin, Gasconade, Lewis, Moniteau, Montgomery, Perry, Platte, Pulaski, St. Louis, Schuyler, Shelby.

*Nebraska.* Banner, Box Butte, Burt, Chase, Cheyenne, Clay, Colfax, Cuming, Dakota, Deuel, Dodge, Douglas, Dundy, Franklin, Hitchcock, Jefferson, Lancaster, Nuckolls, Perkins, Saline, Seward, Sioux, Stanton, Thayer, Thurston, Washington, Wayne.

*New Mexico.* Catron, Colfax, De Baca, Dona Ana, Grant, Guadalupe, Harding, Hidalgo, Lincoln, Los Alamos, Luna, McKinley, Mora, Otero, Quay, Rio Arriba, Sandoval, San Juan, San Miguel, Santa Fe, Sierra, Socorro, Taos, Torrance, Union, Valencia.

*Oklahoma.* Alfalfa, Cimarron, Custer, Ellis, Jackson, Woodward.

*South Dakota.* Aurora, Beadle, Bennett, Bon Homme, Brookings, Brown, Brule, Buffalo, Butte, Campbell, Charles Mix, Clark, Clay, Codrington, Corson, Custer, Davison, Day, Deuel, Dewey, Douglas, Edmunds, Fall River, Grant, Gregory, Haakon, Hamlin, Hand, Hanson, Harding, Hughes, Hutchinson, Jackson, Jerauld, Kingsbury, Lake, Lawrence, Lincoln, Lyman, Marshall, McCook, McPherson, Meade, Mellette, Miner, Minnehaha, Moody, Pennington, Perkins, Potter, Roberts, Sanborn, Shannon, Spink, Sully, Todd, Tripp, Turner, Union, Walworth, Washabaugh, Yankton, Ziebach.

*Tennessee.* Anderson, Blount, Campbell, Carter, Claiborne, Fentress, Grainger, Hamblen, Hancock, Johnson, Knox, Lake, Lewis, Meigs, Morgan, Perry, Polk, Roane, Robertson, Scott, Sequatchie, Sevier, Sullivan, Unicoi, Union, Van Buren.

*Texas.* Armstrong, Bandera, Borden, Brewster, Childress, Comal, Crane, Culberson, Ector, Gillespie, Glasscock, Hartley, Hemphill, Hudspeth, Hutchinson, Irion, Jeff Davis, Kendall, Kimble, Llano, Loving, Martin, Mason, Menard, Midland, Moore, Newton, Ochiltree, Pecos, Presidio, Real, Roberts, Schleicher, Sherman, Sterling, Sutton, Terrell, Tom Green, Val Verde, Ward, Winkler, Yoakum.

*Utah.* Beaver, Cache, Carbon, Daggett, Davis, Duchesne, Emery, Garfield, Grand, Iron, Juab, Kane, Millard,



Morgan, Piute, Rich, Salt Lake, San Juan, Sanpete, Sevier, Summitt, Tooele, Uintah, Utah, Wasatch, Washington, Wayne, Weber.

*Puerto Rico.* Adjuntas, Aguada, Aguadilla, Aguas Buenas, Aibonito, Anasco, Arroyo, Barceloneta, Barranquitas, Bayamon, Cabo Rojo, Caguas, Canovanas (Loiza), Catano, Cayey, Ceiba, Ciales, Cidra, Coamo, Comerio, Corozal, Culebra, Dorado, Fajardo, Guanica, Guayama, Guaynabo, Guayanilla, Hormigueros, Humacao, Jayuya, Juana Diaz, Juncos, Lajas, Leres, Las Marias, Luquillo, Manati, Maricao, Maunabo, Mayaguez, Moca, Naranjito, Orocovis, Patillas, Penuelas, Ponce, Rincon, Rio Grande, Rio Piedras, Sabana Grande, Salinas, San German, San Juan, San Lorenzo, Santa Isabel, Toa Alta, Toa Baja, Trujillo Alto, Utuado, Vega Alta, Vega Baja, Vieques, Villalba, Yabucoa, Yauco.

3. § 78.21 is revised to read as follows:

**§ 78.21 Modified certified brucellosis areas.**

The following States, or specified portions thereof, are hereby designated as Modified Certified Brucellosis Areas:

(a) *Entire States.*

None

(b) *Specific Counties Within States.*

*Alabama.* Autauga, Baldwin, Barbour, Bibb, Blount, Bullock, Butler, Calhoun, Chambers, Cherokee, Chilton, Choctaw, Clarke, Clay, Cleburne, Coffee, Colbert, Conecuh, Coosa, Covington, Crenshaw, Cullman, Dallas, De Kalb, Elmore, Etowah, Escambia, Fayette, Franklin, Greene, Hale, Henry, Houston, Jackson, Jefferson, Lamar, Lauderdale, Lawrence, Lee, Limestone, Lowndes, Macon, Madison, Marengo, Marion, Marshall, Mobile, Monroe, Montgomery, Morgan, Perry, Pickens, Pike, Randolph, Russell, St. Clair, Shelby, Sumter, Talladega, Tallapoosa, Tuscaloosa, Walker, Washington, Wilcox, Winston.

*Alaska.* The Aleutian Islands below 56° latitude.

*Arkansas.* Arkansas, Ashley, Benton, Boone, Calhoun, Carroll, Chicot, Clark, Clay, Cleburne, Cleveland, Conway, Craighead, Crawford, Cross, Desha, Faulkner, Franklin, Greene, Hempstead, Hot Spring, Howard, Independence, Izard, Jackson, Johnson, Lafayette, Lawrence, Lee, Lincoln, Little River, Logan, Lonoke, Madison, Miller, Mississippi, Nevada, Perry, Phillips, Pike, Poinsett, Polk, Pope, Prairie, Pulaski, Randolph, Saline, Scott, St. Francis, Searcy, Sebastian, Sevier, Sharp, Van Buren, Washington, White, Yell.

*Florida.* Alachua, Bradford, Brevard, Broward, Clay, Collier, Columbia, Dade, De Sota, Duval, Escambia, Flagler,

Gilchrist, Glades, Gulf, Hamilton, Hendry, Hernando, Hillsborough, Indian River, Jefferson, Lafayette, Lake, Lee, Levy, Madison, Manatee, Marion, Martin, Nassau, Orange, Osceola, Palm Beach, Pasco, Pinellas, Polk, Putnam, St. Lucie, Sarasota, Seminole, Sumter, Suwanee, Union, Volusia, Washington.

*Georgia.* Baker, Baldwin, Banks, Barrow, Bartow, Ben Hill, Berrien, Bibb, Bleckley, Brooks, Calhoun, Carroll, Catoosa, Chattooga, Cherokee, Clay, Clinch, Cobb, Coffee, Colquitt, Columbia, Coweta, Crisp, Dade, Dawson, Decatur, Dodge, Dooly, Dougherty, Douglas, Early, Echols, Elbert, Emanuel, Fannin, Fayette, Floyd, Forsyth, Franklin, Fulton, Gilmer, Gordon, Grady, Gwinnett, Habersham, Hall, Hancock, Haralson, Harris, Hart, Heard, Henry, Houston, Irwin, Jackson, Jasper, Jefferson, Jenkins, Jones, Lamar, Lee, Lincoln, Lowndes, Lumpkin, Macon, Madison, Marion, McDuffie, Meriwether, Miller, Mitchell, Montgomery, Morgan, Murray, Muscogee, Newton, Oconee, Oglethorpe, Paulding, Pickens, Pierce, Pike, Polk, Pulaski, Putnam, Quitman, Rabun, Randolph, Rockdale, Schley, Seminole, Spalding, Stephens, Stewart, Sumter, Talbot, Taliaferro, Tattnall, Telfair, Terrell, Thomas, Tift, Towns, Troup, Turner, Union, Walker, Walton, Warren, Washington, Webster, Whitefield, Wilcox, Wilkes, Worth.

*Idaho.* Cassia, Fremont, Gooding, Jefferson, Jerome, Madison, Oneida, Twin Falls.

*Illinois.* Jo Daviess.

*Kansas.* Allen, Atchison, Barton, Butler, Cloud, Cowley, Elk, Ellis, Franklin, Greenwood, Harper, Jackson, Jefferson, Linn, Lyon, McPherson, Montgomery, Morris, Morton, Nemaha, Neosho, Ottawa, Reno, Rice, Russell, Sedgwick, Stafford.

*Kentucky.* Adair, Allen, Anderson, Ballard, Barren, Bath, Boone, Bourbon, Boyd, Boyle, Bracken, Breckinridge, Bullitt, Butler, Caldwell, Calloway, Carlisle, Carroll, Carter, Casey, Christian, Clark, Clinton, Crittenden, Cumberland, Daviess, Edmonson, Elliott, Estill, Fayette, Fleming, Franklin, Fulton, Gallatin, Garrard, Grant, Graves, Grayson, Green, Greenup, Hancock, Hardin, Harrison, Hart, Henderson, Henry, Hickman, Hopkins, Jackson, Jefferson, Jessamine, Larue, Laurel, Lincoln, Livingston, Logan, Lyon, Madison, Marion, Marshall, Mason, McCracken, McLean, Meade, Mercer, Metcalfe, Monroe, Montgomery, Muhlenberg, Nelson, Nicholas, Ohio, Oldham, Owen, Powell, Pulaski, Rockcastle, Rowan, Russell, Scott, Shelby, Simpson, Spencer, Taylor, Todd,

Twigg, Union, Warren, Washington, Wayne, Webster, Woodford.

*Louisiana.* Acadia, Allen, Ascension, Assumption, Avoyelles, Beauregard, Bienville, Bossier, Caddo, Calcasieu, Caldwell, Catahoula, Claiborne, Concordia, De Soto, East Baton Rouge, East Carroll, East Feliciana, Evangeline, Franklin, Grant, Iberia, Iberville, Jackson, Jefferson, Jefferson Davis, Lafayette, La Salle, Lincoln, Livingston, Madison, Morehouse, Natchitoches, Orleans, Ouachita, Plaquemines, Pointe Coupee, Rapides, Red River, Richland, Sabine, St. Bernard, St. Charles, St. Helena, St. James, St. John The Baptist, St. Landry, St. Martin, St. Mary, St. Tammany, Tangipahoa, Tensas, Terrebonne, Union, Vermilion, Vernon, Washington, Webster, West Baton Rouge, West Carroll, West Feliciana, Winn.

*Mississippi.* Adams, Alcorn, Amite, Attala, Benton, Bolivar, Calhoun, Carroll, Chickasaw, Choctaw, Claiborne, Clarke, Clay, Coahoma, Copiah, Covington, De Soto, Forrest, Franklin, George, Greene, Grenada, Hancock, Hinds, Holmes, Humphreys, Issaquena, Itawamba, Jackson, Jasper, Jefferson, Jefferson Davis, Jones, Kemper, Lafayette, Lamar, Lauderdale, Lawrence, Leake, Lee, LeFlore, Lincoln, Lowndes, Madison, Marion, Marshall, Monroe, Montgomery, Neshoba, Newton, Noxubee, Oktibbeha, Panola, Pearl River, Perry, Pike, Pontotoc, Prentiss, Quitman, Rankin, Scott, Sharkey, Simpson, Smith, Stone, Sunflower, Tallahatchie, Tate, Tippah, Tishomingo, Tunica, Union, Walthall, Warren, Washington, Wayne, Webster, Wilkinson, Winston, Yalobusha, Yazoo.

*Missouri.* Adair, Andrew, Atchinson, Barry, Barton, Bates, Benton, Bollinger, Boone, Buchanan, Butler, Caldwell, Callaway, Camden, Cape Girardeau, Carroll, Carter, Cass, Cedar, Chariton, Christian, Clark, Clay, Clinton, Cole, Cooper, Crawford, Dade, Dallas, Daviess, DeKalb, Dent, Douglas, Franklin, Gentry, Greene, Grundy, Harrison, Henry, Hickory, Holt, Howard, Howell, Iron, Jackson, Jasper, Jefferson, Johnson, Knox, Laclede, Lafayette, Lawrence, Lincoln, Linn, Livingston, Macon, Madison, Maries, Marion, McDonald, Mercer, Miller, Mississippi, Monroe, Morgan, New Madrid, Newton, Nodaway, Oregon, Osage, Ozark, Pemiscot, Pettis, Phelps, Pike, Polk, Putnam, Ralls, Randolph, Ray, Reynolds, Ripley, St. Charles, St. Clair, St. Francois, St. Genevieve, Saline, Scotland, Scott, Shannon, Stoddard, Stone, Sullivan, Taney, Texas, Vernon, Warren, Washington, Wayne, Webster, Worth, Wright.



*Nebraska.* Adams, Antelope, Arthur, Blaine, Boone, Boyd, Brown, Buffalo, Butler, Cass, Cedar, Cherry, Custer, Dawes, Dawson, Dixon, Fillmore, Frontier, Furnas, Gage, Garden, Garfield, Gosper, Grant, Greeley, Hall, Hamilton, Harlan, Hayes, Holt, Hooker, Howard, Johnson, Kearney, Keith, Keya Paha, Kimball, Knox, Lincoln, Logan, Loup, Madison, McPherson, Merrick, Morrill, Nance, Nemaha, Otoe, Pawnee, Phelps, Pierce, Platte, Polk, Redwillow, Richardson, Rock, Sarpy, Saunders, Scotts Bluff, Sheridan, Sherman, Thomas, Valley, Webster, Wheeler, York.

*New Mexico.* Bernalillo, Chaves, Curry, Eddy, Lea, Roosevelt.

*Oklahoma.* Adair, Atoka, Beaver, Beckham, Blaine, Bryan, Caddo, Canadian, Carter, Cherokee, Choctaw, Cleveland, Coal, Comanche, Cotton, Craig, Creek, Delaware, Dewey, Garfield, Garvin, Grady, Grant, Greer, Harmon, Harper, Haskell, Hughes, Jefferson, Johnson, Kay, Kingfisher, Kiowa, Latimer, Le Flore, Lincoln, Logan, Love, Major, Marshall, Mayes, McClain, McCurtain, McIntosh, Murray, Muskogee, Noble, Nowata, Okfuskee, Oklahoma, Okmulgee, Osage, Ottawa, Pawnee, Payne, Pittsburg, Pontotoc, Pottawatomie, Pushmataha, Roger Mills, Rogers, Seminole, Sequoyah, Stephens, Texas, Tillman, Tulsa, Wagoner, Washington, Washita, Woods.

*South Dakota.* Faulk, Hyde, Jones, Stanley.

*Tennessee.* Bedford, Benton, Bledsoe, Bradley, Cannon, Carroll, Cheatham, Chester, Clay, Cocke, Coffee, Crockett, Cumberland, Davidson, Decatur, DeKalb, Dickson, Dyer, Fayette, Franklin, Gibson, Giles, Greene, Grundy, Hamilton, Hardeman, Hardin, Hawkins, Haywood, Henderson, Henry, Hickman, Houston, Humphreys, Jackson, Jefferson, Lauderdale, Lawrence, Lincoln, Loudon, Macon, Madison, Marion, Marshall, Maury, McMinn, McNairy, Monroe, Montgomery, Moore, Obion, Overton, Pickett, Putnam, Rhea, Rutherford, Shelby, Smith, Stewart, Sumner, Tipton, Trousdale, Warren, Washington, Wayne, Weakley, White, Williamson, Wilson.

*Texas.* Anderson, Andrews, Angelina, Aransas, Archer, Atascosa, Austin, Bailey, Bastrop, Baylor, Bee, Bell, Bexar, Blanco, Bosque, Bowie, Brazoria, Brazos, Briscoe, Brooks, Brown, Burleson, Burnet, Caldwell, Calhoun, Callahan, Cameron, Camp, Carson, Cass, Castro, Chambers, Cherokee, Clay, Cochran, Coke, Coleman, Collin, Collingsworth, Colorado, Comanche, Concho, Cooke, Coryell, Cottle, Crockett, Crosby, Dallam, Dallas, Dawson, Deaf Smith, Delta, Denton, De Witt, Dickens,

Dimmitt, Donley, Duval, Eastland, Edwards, Ellis, El Paso, Erath, Falls, Fannin, Fayette, Fisher, Floyd, Foard, Fort Bend, Franklin, Freestone, Frio, Gaines, Galveston, Garza, Goliad, Gonzales, Gray, Grayson, Gregg, Grimes, Guadalupe, Hale, Hall, Hamilton, Hansford, Hardeman, Hardin, Harris, Harrison, Haskell, Hays, Henderson, Hidalgo, Hill, Hockley, Hood, Hopkins, Houston, Howard, Hunt, Jack, Jackson, Jasper, Jefferson, Jim Hogg, Jim Wells, Johnson, Jones, Karnes, Kaufman, Kenedy, Kent, Kerr, King, Kinney, Kleberg, Knox, Lamar, Lamb, Lampasas, La Salle, Lavaca, Lee, Leon, Liberty, Limestone, Lipscomb, Live Oak, Lubbock, Lynn, McCulloch, McLennan, McMullen, Madison, Marion, Matagorda, Maverick, Medina, Milam, Mills, Mitchell, Montague, Montgomery, Morris, Motley, Nacogdoches, Navarro, Nolan, Nueces, Oldham, Orange, Palo Pinto, Panola, Parker, Parmer, Polk, Potter, Rains, Randall, Reagan, Red River, Reeves, Refugio, Robertson, Rockall, Runnels, Rusk, Sabine, San Augustine, San Jacinto, San Patricio, San Saba, Scurry, Shackelford, Shelby, Smith, Somervell, Starr, Stephens, Stonewall, Swisher, Tarrant, Taylor, Terry, Throckmorton, Titus, Travis, Trinity, Tyler, Upshur, Upton, Uvalde, Van Zandt, Victoria, Walker, Waller, Washington, Webb, Wharton, Wheeler, Wichita, Wilbarger, Willacy, Williamson, Wilson, Wise, Wood, Young, Zapata, Zavala.

*Utah.* Box Elder.

*Puerto Rico.* Arecibo, Camuy, Carolina, Gurabo, Hatillo, Isabela, Las Piedras, Morovis, Naguabo, Quebradillas, San Sebastian.

4. § 78.22 is revised to read as follows:

#### § 78.22 Noncertified areas.

The following States, or specified portions thereof, are hereby designated as Noncertified Brucellosis Areas:

(a) *Entire States.*

Yellowstone National Park.

(b) *Specific Counties Within States.*

*Florida.* Charlotte, Hardee, Highlands, Okeechobee; *Louisiana.* Cameron, Lafourche.

Done at Washington, D.C., this 10th day of August 1981.

J. K. Atwell,

Deputy Administrator, Veterinary Services.

[FR Doc. 81-23515 Filed 8-13-81; 8:45 am]

BILLING CODE 3410-34-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### 18 CFR Part 282

[Docket Nos. RM79-14, RM80-18, RM80-75]

#### Agricultural Exemptions from Incremental Pricing

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Order Delineating Effect Of Judicial Action On Commission's Regulations.

**SUMMARY:** The Federal Energy Regulatory Commission informs natural gas suppliers and industrial end-users that a recent judicial decision affects the Commission's regulations under Title II of the Natural Gas Policy Act of 1978 (NGPA). As a result of this decision, boiler fuel users of natural gas who produce fertilizer, agricultural chemicals, animal feed and food, and who have been claiming an "agricultural use" exemption from incremental pricing as "process fuel" users are no longer eligible for that exemption. Affected end-users are required to file a "Change of Circumstances" notice with the Commission and the supplier by August 31, 1981, pursuant to the "prompt notice" requirement set forth at 18 CFR 282.205(a). Such notices will take effect as of the billing period beginning September 1, 1981, pursuant to 18 CFR 282.205(d).

**DATES:** Court Mandate issued on July 27, 1981.

Notice of Change of Circumstances to be filed by August 31, 1981.

Effective date of Notice to begin with billing period commencing September 1, 1981.

**ADDRESS:** Notice will be filed with the individual supplier and with: Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426.

**FOR FURTHER INFORMATION CONTACT:** Carol M. Lane, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426 (202) 357-8511

or

Alice Fernandez, Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426 (202) 357-9095

**SUPPLEMENTARY INFORMATION:** In April 1980, the Secretary of Agriculture (Secretary) issued a rule (45 FR 27741,



April 24, 1980) defining the term "process fuel" as it is used in section 401 of the NGPA. This definition expanded the Secretary's use of the term to include "natural gas used to produce steam which in turn is directly applied in the processing of products." \* \* \* By this definition the Secretary certified certain uses of gas as "essential agricultural uses" for purposes of Title IV (curtailment) of the NGPA.

Section 282.202 of the Commission's Title II regulations (18 CFR 282.202) exempts from incremental pricing as an "agricultural use" any use of natural gas "certified by the Secretary of Agriculture" \* \* \* as an "essential agricultural use" pursuant to section 401 of the NGPA \* \* \* Thus when the Secretary certified certain "process fuel" users for purposes of Title IV, these users also began claiming incremental pricing exemptions pursuant to § 282.202.

On June 30, 1981, the United States Court of Appeals for the District of Columbia issued a decision in *Process Gas Consumers Group, et al. v. United States Department of Agriculture*. By that decision the court vacated and set aside the Secretary's definition of "process fuel." This judicial action removes these "process fuel" users from the Secretary's list of certified "essential agricultural uses." It also eliminates the "agricultural use" exemption from incremental pricing that had previously been claimed under § 282.202 by those facilities certified by the Secretary.

The Commission's order sets forth the details of the court's decision and its effect on the Commission's Title II regulations. The order also explains the effect of the decision with respect to ongoing Commission proceedings in Docket Nos. RM80-18 and RM80-75.

Before Commissioners: Georgiana Sheldon, Matthew Holden, Jr., and J. David Hughes.

Agricultural Exemptions from Incremental Pricing. Docket Nos. RM79-14, RM80-18, RM80-75. Order delineating effect of judicial action on Commission's regulations.

Issued July 31, 1981.

On June 30, 1981, the United States Court of Appeals for the District of Columbia issued an opinion in *Process Gas Consumers Group, et al. v. United States Department of Agriculture (PCCG)* (Nos. 80-1558 and 80-1603) which affects the Commission's incremental pricing regulations. By that opinion, the court determined that natural gas used as boiler fuel to produce steam, which steam in turn is directly applied in the manufacturing process of products, is not used as

process fuel. This determination eliminates the exemption from incremental pricing that has previously been extended to such uses under Title II of the Natural Gas Policy Act of 1978 (NGPA) (15 U.S.C. §§ 3301-3432).

In order that all affected suppliers and end-users may be fully aware of the ramifications of this judicial action, the Commission issues the instant order.<sup>1</sup>

#### Background

The court's decision was reached in the context of Title IV of the NGPA. Title IV sets forth a system of priorities for natural gas allocation during periods of gas curtailment. The highest priority category includes gas used in residences, hospitals and similar facilities, and the second priority goes to facilities using gas for "essential agricultural uses." To qualify for the second priority, a facility's use of gas must, *inter alia*, be certified by the Secretary of Agriculture (Secretary) as an "essential agricultural use." This term is defined in section 401(f)(1) of the Act as:

[A]ny use of natural gas—  
(A) for agricultural production, natural fiber production, natural fiber processing, food processing, food quality maintenance, irrigation pumping, crop drying, or

(B) as a *process fuel* or feedstock in the production of fertilizer, agricultural chemicals, animal feed, or food, which the Secretary of Agriculture determines is necessary for full food and fiber production (emphasis added).

In April 1980 the Secretary issued a rule (45 Fed. Reg. 27741, April 24, 1980) defining the term "process fuel" as used in section 401. The Secretary's definition expanded the Secretary's use of the term beyond the definition traditionally used by the Commission<sup>2</sup> to include "natural gas used to produce steam which in turn is directly applied in processing of products and for compression of products so that processing may take place . . ." As a result of this definition, boiler fuel users of natural gas who use steam directly in the manufacture of fertilizer, agricultural chemicals, animal

feed, or food became eligible for the second curtailment priority as "process" users.

The Secretary's definition of "process fuel" was challenged in court. In the *PCCG* decision, the D.C. Circuit vacated and set aside the definition, stating that (1) this Commission, not the Secretary of Agriculture, has the explicit responsibility for defining technical terms used in the NGPA, and (2) the Secretary's definition is not in accord with the intent of Congress when it enacted the NGPA. The mandate of the court took effect on July 27, 1981, pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure and the procedures of the D.C. Circuit. Such mandate has the following effect on the Commission's administration of Title II.<sup>3</sup>

Title II of the NGPA requires that industrial boiler fuel users of natural gas be incrementally priced unless an exemption is provided pursuant to section 206. Section 206(b) provides an exemption for "agricultural uses" of natural gas and defines those uses in terms similar to those used in section 401 to define "essential agricultural uses." The Commission's regulations implementing the agricultural exemption from incremental pricing (18 C.F.R. § 282.202) were set forth in Order No. 49<sup>4</sup> and defined the term "agricultural use" to include:

[A]ny use of natural gas:  
(1) which is certified by the Secretary of Agriculture under 7 C.F.R. § 2900.3 as an "essential agricultural use" pursuant to section 401 of the NGPA . . .<sup>5</sup>

On the basis of this regulation,<sup>6</sup> most users of natural gas to raise steam

<sup>1</sup> The effect of the court's mandate on the Commission's administration of Title IV will be the subject of Commission action in Docket No. RM79-15.

<sup>2</sup> Docket No. RM79-14, issued September 28, 1979, 44 Fed. Reg. 57726, October 5, 1979.

<sup>3</sup> Section 2900.3 lists "Fertilizer and Agricultural Chemicals" and "Animal Feeds and Food" as "essential agricultural uses," but only to the extent that they are "process and feedstock" uses. Thus boiler fuel users who manufacture these items were certified under § 2900.3 only for so long as the Secretary's regulation in § 2900.2(e) defined their use as "process fuel" use. That regulation has now been vacated and set aside by the court order.

<sup>4</sup> This regulation was later amended in Docket No. RM80-75 to provide that only those uses of gas which were certified by the Secretary on or before October 15, 1979, were automatically adopted as "agricultural uses." However, the amendment was partially stayed on October 23, 1980, and fully stayed on April 23, 1981. See 45 Fed. Reg. 70681, November 20, 1980, and 46 Fed. Reg. 25599 (May 8, 1981). The stay orders are not affected by the court's decision in *PCCG*. Manufacturers of fertilizer, agricultural chemicals, animal feed and food who filed exemption affidavits in reliance on the Secretary's certification of their gas use after October 15, 1979, may no longer claim exemptions on the basis of the stay orders because their uses

Continued

<sup>5</sup> A motion was filed by the United Distribution Companies (UDC) under § 1.12 of the Commission's regulations on July 24, 1981 in Docket Nos. RM79-14, RM80-75, and RM80-18. That motion requested clarification of the date upon which incremental pricing applies to affected boiler fuel uses of gas. The request for clarification is addressed herein. UDC also requested that action be taken in Docket Nos. RM80-18 and RM80-75. That request would have more properly been filed under § 1.7. Except for the clarification addressed herein, the motion will be treated as if filed under § 1.7 and will be addressed in the context of Commission action in Docket Nos. RM80-18 and RM80-75.

<sup>6</sup> Codified at 18 C.F.R. § 2.78(c)



which is then used in the manufacturing of fertilizer, agricultural chemicals, animal feed, and food began claiming "agricultural use" exemptions from incremental pricing in April 1980 when the Secretary certified their use.

#### Effect of Judicial Decision

The mandate of the court in *PGCG* removes the above-described uses of natural gas from the Secretary's list of certified "essential agricultural uses."<sup>7</sup> Thus these uses are not incorporated within the Commission's above-quoted definition of "agricultural uses" for purposes of incremental pricing. Accordingly, any user of natural gas who has filed an incremental pricing exemption affidavit pursuant to Docket No. RM79-14 or the stay orders in Docket No. RM80-75\* in reliance on the Secretary's certification of these uses must comply with the "Change of Circumstances" rule set forth in the Commission's regulations. That rule (18 CFR § 282.205) requires the affected user to notify the Commission and the natural gas supplier that the basis for a previously claimed exemption no longer exists. Section 282.205(a) calls for such notice to be given "promptly." Under the instant circumstances, compliance with the rule by August 31, 1981, will constitute prompt notification. Such notification shall take effect as of the billing period beginning September 1, 1981, pursuant to § 282.205(d).

Many of the industrial facilities affected by the court's decision will need to file revised estimation methodologies delineating that portion of their gas use which remains exempt from incremental pricing under other types of exemptions. Such methodologies should be filed pursuant to the procedures set forth in § 282.207 of the Commission's regulations.

Finally, the Commission notes that it opened a docket last year (Docket No. RM80-18) to consider, *inter alia*, whether to institute a rulemaking to provide an incremental pricing exemption under section 206(d) of the NGPA for the above-described boiler fuel uses of gas. A decision in that docket will be made by the Commission forthwith. If a rulemaking is found appropriate a notice will be issued promptly. In addition, such other factors as may be appropriate to the consideration of an exemption for these uses pursuant to section 206(d) will be

fully deliberated by the Commission. In any event, the Commission intends to have this issue finally resolved so that if it decides to seek a section 206(d) exemption, one may be submitted to the Congress no later than the end of September.

#### The Commission Orders:

(1) Users of natural gas to raise steam which is used in the manufacture of fertilizer, agricultural chemicals, animal feed, and food, who have filed incremental pricing exemption affidavits in reliance on the Secretary of Agriculture's certification of their gas use as an "essential agricultural use" (based on the Secretary's definition of "process fuel") shall file a "Change of Circumstances" notification with the Commission and their natural gas supplier by August 31, 1981, pursuant to § 282.205(a) of the Commission's regulations.

(2) Such notifications shall take effect as of the natural gas supplier's billing period beginning September 1, 1981, pursuant to § 282.205(d) of the Commission's regulations.

(3) Such users shall also file, where appropriate, revised estimation methodologies pursuant to the procedures set forth in § 282.207 of the Commission's regulations.

By the Commission. Commissioner Holden voted present.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 81-23815 Filed 8-13-81; 8:45 am]  
BILLING CODE 6450-85-M

## INTERNATIONAL TRADE COMMISSION

### 19 CFR Part 200

#### Amendment to Agency Ethics Rules

**AGENCY:** International Trade Commission.

**ACTION:** Final rule.

**SUMMARY:** In order to promote the orderly and efficient conduct of its investigations, the Commission adopts an amendment to its ethics regulations to allow employees to accept ground transportation in kind, of nominal value, in the course of investigative field trips, from representatives of the industry being investigated.

**FOR FURTHER INFORMATION CONTACT:** Michael H. Stein, Esq., General Counsel, USITC Ethics Counselor, 701 E Street, NW., Washington, D.C. 20436, 202-523-0350.

**SUPPLEMENTARY INFORMATION:** A notice of proposed rulemaking was published

on page 29729 of the *Federal Register* of June 3, 1981, which invited comments to be received by July 15, 1981. Comments were submitted by one individual and the Office of Government Ethics. The Office of Government Ethics stated its approval of the proposed regulation based upon the Commission's "representation that the transportation is of nominal value and would not be accepted in situations where such acceptance would give the appearance of partiality." The other comment received objected to the creation of exceptions to the rules prohibiting Government employees from soliciting or accepting anything of value from anyone having interests that may be affected by their performance or nonperformance of official duty, including the Commission's existing exception relating to the acceptance of food and other refreshments. The Office of Government Ethics has reviewed the rule change, however, and has found it to be consistent with the provisions of Executive Order 11222, 3 CFR 306 (1965 Compilation).

#### § 200.735-105 [Amended]

The U.S. International Trade Commission amends 19 CFR 200.735-105(b)(2) to read as follows:

(a) Except as provided in paragraph (b) of this section, no employee may solicit or accept \* \* \* any gift \* \* \* or any other thing of monetary value from any person who:

(2) Conducts operations or activities that are being investigated by the Commission \* \* \*

(b) The prohibitions set forth under paragraph (a) of this section shall not apply to:

(2) The acceptance of food and refreshments of nominal value on infrequent occasions in the ordinary course of a luncheon or dinner meeting or other meeting or on a field trip, and of ground transportation of nominal value in the course of a field trip, where an employee may properly be in attendance \* \* \*

Issued: August 6, 1981.

By order of the Commission.

Kenneth R. Mason,  
Secretary.

[FR Doc. 81-23820 Filed 8-13-81; 8:45 am]  
BILLING CODE 7020-02-M

are not incorporated within the Secretary's definition of "essential agricultural uses." Other types of gas users whose certifications are not affected by *PGCG* may continue to claim exemptions on the basis of the stay orders.

<sup>7</sup> See n. 5, *supra*.

\* See n. 6, *supra*.



## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Food and Drug Administration

## 21 CFR Part 103

[Docket No. 80N-0193]

## Bottled Water; Quality Standard

AGENCY: Food and Drug Administration.

ACTION: Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is issuing a final regulation to amend the quality standard for bottled water to include a chemical quality level of 0.10 milligram per liter for total trihalomethanes (TTHM's) in bottled drinking water. This action is based on the June 13, 1980 proposal to amend the quality standard for bottled water (21 CFR 103.35).

EFFECTIVE DATE: October 13, 1981.

**ADDRESS:** Written objections or requests for a formal evidentiary hearing may be submitted to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Howard N. Pippin, Bureau of Foods (HFF-312), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-245-3092.

**SUPPLEMENTARY INFORMATION:** Under section 410 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 349), whenever the Environmental Protection Agency (EPA) prescribes interim or revised national primary drinking water regulations under section 1412 of the Public Health Service Act, FDA is obligated to consult with EPA and either promulgate amendments to bottled water regulations or publish in the Federal Register the reasons for not amending the regulations.

In the Federal Register of November 29, 1979 (44 FR 68624), EPA issued the final rule, "National Interim Primary Drinking Water Regulations; Control of Trihalomethanes in Drinking Water." This rule established a maximum contaminant level (MCL) of 0.10 milligram per liter for TTHM's that are introduced into drinking water by the reaction of naturally occurring substances with chlorine. Accordingly, FDA published in the Federal Register of June 13, 1980 (45 FR 40153) a proposal to amend the quality standard for bottled water (21 CFR 103.35) to include a chemical quality level of 0.10 milligram per liter for TTHM's. Comments on the proposal were to be submitted by August 12, 1980.

Only one comment on the proposal was received. The American Bottled Water Association expressed support for the proposal, indicating that its members had already begun monitoring their source water for trihalomethanes (THM's).

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 401, 403(h), 410, 701(e), 52 Stat. 1046-1047 as amended, 70 Stat. 919 amended, 88 Stat. 1694 (21 U.S.C. 341, 343(h), 349, 371(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10 (formerly 5.1; see 46 FR 26052; May 11, 1981)), Part 103 is amended in § 103.35 by revising paragraphs (a) and (d)(1) to read as follows:

## § 103.35 Bottled Water.

(a) **Definitions.** (1) "Bottled water" is defined as water that is sealed in bottles or other containers and intended for human consumption. Bottled water does not include mineral water or any food defined in § 165.175 of this chapter.

(2) "Trihalomethane" (THM) means one of the family of organic compounds, named as derivatives of methane, wherein three of the four hydrogen atoms in methane are each substituted by a halogen atom in the molecular structure.

(3) "Total Trihalomethanes" (TTHM) means the sum of the concentration in milligrams per liter of the trihalomethane compounds (trichloromethane [chloroform], dibromochloromethane, bromodichloromethane and tribromomethane [bromoform]), rounded to two significant figures.

(d) **Chemical quality.** (1)(i) Bottled water shall, when a composite of analytical units of equal volume from a sample is examined by the methods described in paragraph (d)(1)(ii) of this section, meet standards of chemical quality and shall not contain chemical substances in excess of the following concentrations:

## Substance.—Concentration in Milligrams per Liter

|                        |       |
|------------------------|-------|
| Arsenic                | 0.05  |
| Barium                 | 1.0   |
| Cadmium                | 0.01  |
| Chloride               | 250.0 |
| Chromium               | 0.05  |
| Copper                 | 1.0   |
| Iron                   | 0.3   |
| Lead                   | 0.05  |
| Manganese              | 0.05  |
| Mercury                | 0.002 |
| Nitrate (N)            | 10.0  |
| Phenols                | 0.001 |
| Selenium               | 0.01  |
| Silver                 | 0.05  |
| Sulfate                | 250.0 |
| Total dissolved solids | 500.0 |
| Zinc                   | 5.0   |

## Substance.—Concentration in Milligrams per Liter—Continued

|                                                                                                                     |        |
|---------------------------------------------------------------------------------------------------------------------|--------|
| Organics:                                                                                                           |        |
| Endrin (1,2,3,4,10,10-hexachloro-6,7-epoxy-1,4,4a,5,8,7,8a-octa-hydro-1,4-endo, endo-5,8-dimethano naphthalene)     | 0.0002 |
| Lindane (1,2,3,4,5,6-hexachloro-cyclohexane, gamma isomer)                                                          | 0.004  |
| Methoxychlor (1,1,1-trichloro-2,2-bis(p-methoxy-phenyl) ethane)                                                     | 0.1    |
| Total Trihalomethanes                                                                                               | 0.10   |
| Toxaphene (C <sub>12</sub> H <sub>8</sub> Cl <sub>12</sub> —technical chlorinated camphene, 67-69 percent chlorine) | 0.005  |
| 2,4-D (2,4-dichlorophenoxyacetic acid)                                                                              | 0.1    |
| 2,4,5-TP Silver (2,4,5-trichlorophenoxypropionic acid)                                                              | 0.01   |

(ii) Analyses conducted to determine compliance with paragraph (d)(1)(i) of this section shall be made in accordance with the methods described in the applicable sections of "Standard Methods for the Examination of Water and Wastewater," 14th Ed., 1975<sup>1</sup> or "Methods for Chemical Analysis of Water and Wastes," 1974,<sup>2</sup> both of which are incorporated by reference.

Analyses for organic substances shall be determined by appropriate methods described in "Methods for Organochlorine Pesticides in Industrial Effluents,"<sup>3</sup> and "Methods for Chlorinated Phenoxy Acid Herbicides in Industrial Effluents," November 28, 1973,<sup>4</sup> which are incorporated by reference, and "Part I: The Analysis of Trihalomethanes in Finished Waters by the Purge and Trap Method," Method 501.1 and "Part II: The Analysis of Trihalomethanes in Drinking Water by Liquid/Liquid Extraction," Method 501.2, in 40 CFR Part 141, Appendix C (45 FR 68672; November 29, 1979).

Any person who will be adversely affected by this final rule may file written objections and may make a written request for a formal evidentiary hearing. Objections and requests for a hearing shall on or before September 14, 1981, be submitted to the Dockets Management Branch (address above). Three copies of objections and requests for a hearing shall be submitted, shall be identified with the docket number found in brackets in the heading of this rule, and shall be submitted in accordance with the procedure established in 21 CFR 12.22. Received objections and requests for a hearing may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

<sup>1</sup>Copies are available from: Office of Technology Transfer, Environmental Protection Agency, Washington, DC 20460, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

<sup>2</sup>Copies are available from: Methods Development Quality Assurance Research Laboratory, Environmental Protection Agency, Cincinnati OH 45268, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, D.C. 20408.



**Effective date.** This regulation is effective October 13, 1981.

(Secs. 401, 403(h), 410, 701(e), 52 Stat. 1046-1047 as amended, 70 Stat. 919 as amended, 88 Stat. 1694 (21 U.S.C. 341, 343(h), 349, 371(e)))

Dated: August 10, 1981.

William F. Randolph,

Acting Associate Commissioner for  
Regulatory Affairs.

**Note.**—Incorporation by reference approved by the Director, Office of the Federal Register, March 31, 1981.

[FR Doc. 81-23648 Filed 8-13-81; 8:45 am]

BILLING CODE 4110-03-M

## 21 CFR Part 520

### Oral Dosage Form New Animal Drugs Not Subject to Certification; Diethylcarbamazine Citrate Tablets

**AGENCY:** Food and Drug Administration.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is republishing a portion of the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by International Multifoods, providing for safe and effective use of diethylcarbamazine citrate tablets for prevention of heartworm disease and control of ascarid infections in dogs, and treatment of ascarid infections in dogs and cats.

**EFFECTIVE DATE:** August 14, 1981.

#### FOR FURTHER INFORMATION CONTACT:

Bob G. Griffith, Bureau of Veterinary Medicine (HFV-112), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3430.

#### SUPPLEMENTARY INFORMATION:

International Multifoods, 8th and Marquette Sts., Minneapolis, MN 55402, filed an NADA (107-506) providing for use of 50-, 200-, and 400-milligram (mg) diethylcarbamazine citrate tablets for prevention of heartworm disease in dogs caused by *Dirofilaria immitis*; as an aid in the treatment and control of ascarid infections in dogs caused by *Toxocara canis*, and as an aid in the treatment of ascarid infections in cats caused by *Toxocara canis* and *Toxascaris leonina*.

The product is similar to another tablet that was the subject of a National Academy of Sciences/National Research Council (NAS/NRC) Drug Efficacy Study Implementation (DESI) notice which was published in the Federal Register of January 8, 1969 (34 FR 275). The NAS/NRC notice stated, and the agency concurred, that the drug is probably not effective as a treatment against filariasis, that more information is needed regarding the dosage level to

support claims for prevention of filariasis, and that the drug is effective as an aid in the treatment of ascarid infections in dogs and cats when administered at 5 to 50 mg per pound of body weight as a single dose with a repeat dose given after 10 to 20 days. Sponsors of NADA's for products which did not reflect the conclusions of the notice were required to update their applications by submitting revised labeling or adequate documentation to support the labeling used. Those sponsors whose NADA's satisfied the requirements of the NAS/NRC notice or were found equivalent to the NAS/NRC reviewed products are codified in the regulations in 21 CFR 520.620 and 520.622.

A NAS/NRC DESI notice for a diethylcarbamazine medicated premix was published in the Federal Register of June 16, 1970 (35 FR 9869). The notice concluded that the product is probably effective as an aid in the prevention and elimination of large roundworms in dogs when given as directed in feeds. The agency concluded that the product is effective for this purpose. The notice established the effectiveness of the drug for use in prevention of ascarid infections.

International Multifoods submitted data from a controlled artificial challenge study and reports from published scientific literature to demonstrate that its product is safe and effective for use as labeled. The agency granted a waiver from the requirements of 21 CFR 514.111(a)(5)(ii) for further studies to provide substantial evidence of effectiveness. The NADA is approved and regulations amended to reflect the approval.

In the Federal Register of April 24, 1981 (46 FR 23230), a document reflecting approval of EVSCO's NADA 100-690 (diethylcarbamazine citrate tablets) editorially revised the regulations in 21 CFR 520.622a. That document was published out of sequence, inadvertently providing for the conditions of use covered by the International Multifoods' application. This document provides for approval of International Multifoods' NADA 107-506 and affirms the approval of that portion of 21 CFR 520.622a which published inadvertently.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers

Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The Bureau of Veterinary Medicine has determined pursuant to 21 CFR 25.24(d)(1)(i) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This action is governed by the provisions of 5 U.S.C. 556 and 557 and is therefore excluded from Executive Order 12291 by section 1(a)(1) of the Order.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10 (formerly 5.1; see 46 FR 26052; May 11, 1981)) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), § 520.622a(a)(3) is republished as follows:

#### § 520.622a Diethylcarbamazine citrate tablets.

(a) \* \* \*

(3) See 012518 in § 510.600(c) of this chapter for use of 50, 200, or 400 milligram tablets for prevention of heartworm disease in dogs, as an aid in the control of ascarid infections in dogs, and as an aid in the treatment of ascarid infections in dogs and cats.

**Effective date.** This republication is effective August 14, 1981.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: August 6, 1981.

Gerald B. Guest,

Acting Director, Bureau of Veterinary Medicine.

[FR Doc. 81-23512 Filed 8-13-81; 8:45 am]

BILLING CODE 4110-03-M

## 21 CFR Part 520

### Oral Dosage Form New Animal Drugs Not Subject to Certification; Roxarsone Soluble Powder

**AGENCY:** Food and Drug Administration.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) submitted by Salsbury Laboratories which provides revised labeling for safe and effective use of roxarsone soluble powder in the drinking water of growing chickens and



turkeys for increased rate of weight gain, improved feed efficiency, and improved pigmentation; and in drinking water or drench solution for swine as an aid in treatment of swine dysentery. The regulations are also amended to indicate those conditions of use which were classified as effective as a result of a National Academy of Sciences/National Research Council (NAS/NRC) evaluation of the product.

**EFFECTIVE DATE:** August 14, 1981.

**FOR FURTHER INFORMATION CONTACT:**

Lonnie W. Luther, Bureau of Veterinary Medicine (HFV-147), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4317.

**SUPPLEMENTARY INFORMATION:** Salsbury Laboratories, 2000 Rockford Rd., Charles City, IA 50616, is sponsor of an NADA (93-025) which originally became effective March 23, 1951, as part of NADA 7-891. NADA 93-025 provides for use of roxarsone soluble powder in chicken, turkey, and swine drinking water, and in swine drench solution.

The NADA is one of several for drug products containing 3-nitro-4-hydroxyphenylarsonic acid (roxarsone) that were subject of an NAS/NRC evaluation published in the *Federal Register* of September 10, 1970 (35 FR 14273). The NAS/NRC evaluation concluded, and the agency concurred, that the drugs are: (1) effective for improved feed efficiency for swine, chickens, and turkeys; (2) effective for treatment of swine dysentery (hemorrhagic enteritis or bloody scours); (3) effective for improved pigmentation in chickens and turkeys; (4) probably effective for faster weight gains in swine, chickens, and turkeys, except that the label claim for stimulation of growth should read "will result in faster weight gains and improved feed efficiency under appropriate conditions"; (5) probably not effective for coccidiosis; (6) more information is needed on control of cecal coccidiosis; and (7) not effective for necrotic enteritis in swine.

The NAS/NRC evaluation also stated that: (1) The claim for bloody scours should be changed to "swine dysentery"; (2) a caution statement should be required to state "excessive consumption of this product may cause leg weakness and nerve damage"; and (3) when drugs are administered in water for therapeutic claims, the label should state that treated animals must consume enough medicated water to provide a therapeutic dose under the conditions of use, and the desired oral dose per unit of animal weight per day for each species.

The Food and Drug Administration further concluded by a memorandum dated November 27, 1972, from Dr. Lehmann to Dr. Van Houweling, that antibiotics that carry the claims for growth promotion and feed efficiency, and that were judged as probably effective for those claims, can be moved into the effective category if the claim is rephrased as follows: "For increase in rate of weight gain and improved feed efficiency," later changed to: "For increased rate of weight gain and improved feed efficiency for (appropriate conditions of use)."

The NAS/NRC evaluation considered only the drug's effectiveness and safety for the treated animal and did not consider the safety of food derived from treated animals.

Salsbury Laboratories responded to the NAS/NRC evaluation by submitting a supplemental NADA providing additional safety data and information, revised labeling, and updated manufacturing and controls information.

The supplemental NADA is approved. The regulations are amended to codify the approval and to indicate that approval of identical products for the same conditions of use need not include certain types of effectiveness data required by 21 CFR 514.1(b)(8)(ii) or 514.111(a)(5). In lieu of those data, approval of such products may require submission of bioequivalency or similar data as suggested in the guideline for submitting NADA's for NAS/NRC reviewed generic drugs. The guideline is available from the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (address above), from 9 a.m. to 4 p.m., Monday through Friday.

The Bureau of Veterinary Medicine has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement therefore will not be prepared. The Bureau's finding of no significant impact and the evidence supporting this finding, contained in an environmental impact analysis report (pursuant to 21 CFR 25.1(f)(2)(ii)), may be seen in the Dockets Management Branch (address above).

This action is governed by the provisions of 5 U.S.C. 556 and 557 and is therefore excluded from Executive Order 12291 by section 1(a)(1) of the Order.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10 (formerly 5.1; see 46 FR 26052; May 11, 1981)) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), Part 520 is amended by adding new § 520.2087 to read as follows:

**§ 520.2087 Roxarsone soluble powder.**

(a) *Specifications.* Each ounce (avoirdupois) of soluble powder contains 21.7 grams of roxarsone (monosodium 3-nitro-4-hydroxyphenylarsonate).

(b) *Sponsor.* See No. 017210 in § 510.600(c) of this chapter.

(c) *Related tolerances.* See § 556.60 of this chapter.

(d) *NAS/NRC status.* These conditions of use are NAS/NRC reviewed and found effective. NADA's for these uses need not include effectiveness data as specified by § 514.111 of this chapter, but may require bioequivalency and safety information.

(e) *Conditions of use—(1) Growing chickens and growing turkeys—(i) Amount.* 0.002 percent roxarsone in drinking water (one packet per each 250 gallons of drinking water).

(ii) *Indications for use.* For increased rate of weight gain, improved feed efficiency, and improved pigmentation.

(iii) *Limitations.* Administer continuously throughout growing period. Withdraw 5 days before slaughter. Use as sole source of organic arsenic.

(2) *Swine—(i) Amount.* 0.01 percent roxarsone in drinking water (one packet per each 50 gallons of drinking water); or 30 milliliters of a 1.55 percent roxarsone solution (one packet per 3 pints of water) per 50 pounds of body weight as a drench.

(ii) *Indications for use.* As an aid in the treatment of swine dysentery (hemorrhagic enteritis or bloody scours).

(iii) *Limitations.* Administer drinking water continuously for not more than 6 days. Administer drench once daily for 1 or 2 days. If no improvement is observed, consult a veterinarian. Treatment may be repeated after 5 days. Withdraw 5 days before slaughter. Use as sole source of organic arsenic.

*Effective date.* This regulation is effective August 14, 1981.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))



Dated: August 7, 1981.

David P. Ducharme,

Acting Associate Director for Scientific  
Evaluation, Bureau of Veterinary Medicine.

[FR Doc. 81-23645 Filed 8-13-81; 8:43 am]

BILLING CODE 4110-03-M

## 21 CFR Part 520

### Oral Dosage Form New Animal Drugs Not Subject to Certification; Roxarsone Tablets

AGENCY: Food and Drug Administration.

ACTION: Final rule

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to codify a previously approved new animal drug application (NADA) sponsored by Salsbury Laboratories which provides for the safe and effective use of roxarsone tablets in the drinking water of chickens and turkeys as a growth promotant and coccidiostat. The regulations are also amended to indicate those conditions of use which were found effective as a result of a National Academy of Sciences/National Research Council (NAC/NRC) evaluation of the product.

**EFFECTIVE DATE:** August 14, 1981.

**FOR FURTHER INFORMATION CONTACT:** Lonnie W. Luther, Bureau of Veterinary Medicine (HFV-147), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4317.

**SUPPLEMENTARY INFORMATION:** Salsbury Laboratories, Charles City, IA 50616, is sponsor of an NADA (5-414) which originally became effective March 21, 1944, providing for use of roxarsone tablets in the drinking water of chickens and turkeys. The NADA is one of several for drug products containing 3-nitro-4-hydroxyphenyl-arsonic acid (roxarsone) that were the subject of a NAS/NRC evaluation published in the Federal Register of September 10, 1970 (35 FR 14273). The NAS/NRC evaluation concluded, and FDA concurred, that the drug is effective for chickens and turkeys for improved feed efficiency and improved pigmentation and probably effective for faster weight gains, but that the labeling should state the drug will result in faster weight gains and improved feed efficiency under appropriate conditions, will probably not be effective for coccidiosis, and that more information is needed on control of cecal coccidiosis.

The NAS/NRC evaluation further stated that a caution statement should be required to state that excessive consumption may cause leg weakness and nerve damage. The evaluation also

provided that when the drug is administered in drinking water for therapeutic claims its labeling should contain a warning that treated animals must consume enough medicated water to provide a therapeutic dose under the prevailing conditions. The evaluation also provided that the label should state the desired oral dose per unit of animal per day.

The NAS/NRC evaluation considered only the drug's effectiveness and safety for the treated animal and did not consider the safety of food derived from the treated animal.

FDA further concluded the claim should be for increased rate of weight gain and improved feed efficiency for certain conditions of use.

Salsbury Laboratories responded to the NAS/NRC evaluation by submitting a supplemental NADA providing additional effectiveness data from tests conducted at Salsbury Laboratories, published articles supporting the claim "an aid in preventing coccidiosis due to *Eimeria tenella* in flocks of growing chickens," revised labeling, and updated manufacturing and controls information. The additional effectiveness data and information substantiated upgrading the NAS/NRC rating for coccidiosis to effective.

The supplemental NADA is approved. The regulations are amended to codify the approval and to indicate that approval of identical products for the same conditions of use need not include certain types of effectiveness data as required by 21 CFR 514.1(b)(8)(ii) or 514.111(a)(5). In lieu of those data, approval of such products may require submission of bioequivalency or similar data as suggested in the guideline for submitting NADA's for NAS/NRC reviewed generic drugs. The guideline is available from the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA-305), Food and Drug Administration, Rm. 4-82, 5600 Fishers Lane, Rockville, MD 20857.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (address above), from 9 a.m. to 4 p.m., Monday through Friday.

The Bureau of Veterinary Medicine has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement therefore will not be prepared. The Bureau's finding of no

significant impact and the evidence supporting this finding, contained in an environmental impact analysis report (pursuant to 21 CFR 25.1(j)), may be seen in the Dockets Management Branch (address above).

This action is governed by the provisions of 5 U.S.C. 556 and 557 and is therefore excluded from Executive Order 12291 by section 1(a)(1) of the Order.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10 (formerly 5.1; see 46 FR 26052; May 11, 1981)) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), Part 520 is amended by adding new § 520.2088 to read as follows:

#### § 520.2088 Roxarsone tablets.

(a)(1) *Specifications.* Each tablet contains 36 milligrams of roxarsone (3-nitro-4-hydroxyphenylarsonic acid).

(2) *Sponsor.* See No. 017210 in § 510.600(c) of this chapter.

(3) *Related tolerances.* See § 556.60 of this chapter.

(4) *NAS/NRC status.* These conditions are NAS/NRC reviewed and found effective. NADA's for these uses need not include effectiveness data as specified by § 514.111 of this chapter, but may require bioequivalency and safety information.

(5) *Conditions of use—(i) Growing chickens and growing turkeys—(a) Amount.* Dissolve 2 tablets in each gallon of drinking water (0.002 percent roxarsone).

(b) *Indications for use.* For increased rate of weight gain, improved feed efficiency, and improved pigmentation.

(c) *Limitations.* Administer continuously throughout growing period. Withdraw 5 days before slaughter. Use as sole source of organic arsenic.

(ii) *Growing chickens—(a) Amount.* Dissolve 8 tablets in each gallon of drinking water (0.008 percent roxarsone).

(b) *Indications for use.* As an aid in the prevention of coccidiosis due to *Eimeria tenella*.

(c) *Limitations.* Administer for not more than 10 consecutive days. Treatment may be repeated after 5 days off medication. Withdraw 5 days before slaughter. Use as sole source of organic arsenic.

(b) [Reserved]

*Effective date.* This regulation is effective August 14, 1981.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))



Dated: August 7, 1981.

David P. Ducharme,  
Acting Associate Director for Scientific  
Evaluation, Bureau of Veterinary Medicine.

[FR Doc. 81-23647 Filed 8-13-81; 8:45 am]

BILLING CODE 4110-03-M

## 21 CFR Part 522

### Implantation or Injectable Dosage Form New Animal Drugs Not Subject to Certification; Trimethoprim and Sulfadiazine Sterile Suspension

**AGENCY:** Food and Drug Administration.  
**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Wellcome Animal Health Division, Burroughs Wellcome Co., providing for the safe and effective use of a combination antibacterial drug for treating dogs.

**EFFECTIVE DATE:** August 14, 1981.

**FOR FURTHER INFORMATION CONTACT:** Sandra K. Woods, Bureau of Veterinary Medicine (HFV-114), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3420.

**SUPPLEMENTARY INFORMATION:** Wellcome Animal Health Division, Burroughs Wellcome Co., 3030 Cornwallis Rd., Research Triangle Park, NC 27709, filed an NADA (105-093) providing for subcutaneous use of Tribrissen 24 Injection (a sterile suspension containing 40 milligrams (mg) of trimethoprim and 200 mg of sulfadiazine per milliliter (mL)) for the treatment of bacterial infections of dogs. The firm also holds approval for trimethoprim-sulfadiazine tablets. The injection is indicated where control of bacterial infections is required during treatment of acute urinary tract infections, acute bacterial complications of distemper, acute respiratory tract infections, acute alimentary tract infections, wound infections and abscesses, and acute septicemia due to *Streptococcus zooepidemicus*. The firm submitted safety and effectiveness data in support of its application. Based on a study showing bioequivalency with the tablets, the Director granted a waiver from the minimum number of control animals in the clinical investigation. The NADA is approved, and the regulations are amended to reflect the approval.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support

approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The Bureau of Veterinary Medicine has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement therefore will not be prepared. The Bureau's findings of no significant impact and the evidence supporting this finding, contained in an environmental impact analysis report (pursuant to 21 CFR 25.1(f)(1)(ii)), may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, address above.

This action is governed by the provisions of 5 U.S.C. 556 and 557 and is therefore excluded from Executive Order 12291 by section 1(a)(1) of the Order.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10 (formerly 5.1; see 46 FR 26052; May 11, 1981)) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), Part 522 is amended by adding new § 522.2610 to read as follows:

#### § 522.2610 Trimethoprim and sulfadiazine sterile suspension.

(a) *Specifications.* Each milliliter of sterile aqueous suspension contains 240 milligrams (40 milligrams of trimethoprim and 200 milligrams of sulfadiazine).

(b) *Sponsor.* See 017220 in § 510.600(c) of this chapter.

(c) *Conditions of use.*—(1) *Dosage.* One milliliter (40 milligrams of trimethoprim and 200 milligrams of sulfadiazine) per 20 pounds (9 kilograms) of body weight per day.

(2) *Indications.* For dogs for treatment of acute urinary tract infections, acute bacterial complications of distemper, acute respiratory tract infections, acute alimentary tract infections, and acute septicemia due to *Streptococcus zooepidemicus*.

(3) *Limitations.* For subcutaneous use in dogs only; administer once every 24 hours, or for severe infections, after an initial dose, administer half the normal daily dose every 12 hours; continue therapy 2 to 3 days after clinical signs of infection have subsided; if no improvement is seen in 3 to 5 days, reevaluate diagnosis; injection may be used alone or in conjunction with oral dosing; not recommended for use for

more than 14 days; a complete blood count should be done for prolonged use; Federal law restricts this drug to use by or on the order of a licensed veterinarian.

*Effective date.* This regulation is effective August 14, 1981.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: August 6, 1981.

Gerald B. Guest,  
Acting Director, Bureau of Veterinary  
Medicine.

[FR Doc. 81-23511 Filed 8-13-81; 8:45 am]

BILLING CODE 4110-03-M

## 21 CFR Part 558

### New Animal Drugs for Use in Animal Feeds; Bacitracin Methylene Disalicylate

**AGENCY:** Food and Drug Administration.  
**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by A. L. Laboratories, Inc., providing revised labeling for use of bacitracin premixes to manufacture complete chicken, turkey, pheasant, and quail feeds for increased rate of weight gain and improved feed efficiency.

**EFFECTIVE DATE:** August 14, 1981.

**FOR FURTHER INFORMATION CONTACT:** Lonnie W. Luther, Bureau of Veterinary Medicine (HFV-147), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4317.

**SUPPLEMENTARY INFORMATION:** A. L. Laboratories, Inc., 452 Hudson Terrace, Englewood Cliffs, NJ 07632, filed a supplemental NADA (46-592) providing for use of bacitracin methylene disalicylate premixes containing either 10, 25, 40, or 50 grams of bacitracin per pound to manufacture complete feeds containing 4 to 50 grams of bacitracin per ton for chickens, turkeys, and pheasants and 5 to 20 grams of bacitracin per ton for quail for increased rate of weight gain and improved feed efficiency.

Bacitracin methylene disalicylate at 4 to 50 and 5 to 20 grams per ton was in use for these species before October 10, 1962. The product was the subject of two National Academy of Sciences/National Research Council (NAS/NRC) notices published in the Federal Register of July 17, 1970 (DESI 0061NV; 35 FR 11531) and October 2, 1970 (DESI 0061NV, 35 FR 15408). The NAS/NRC notices concluded, and the agency concurred,



that these products are probably effective for growth claims in poultry and probably not effective for therapeutic claims. The Bureau of Veterinary Medicine (BVM) required new data to support therapeutic claims which NAS/NRC found not effective or probably not effective. The NADA sponsors were permitted interim marketing while collecting data supporting the claims. The NAS/NRC notice classified bacitracin methylene disalicylate as probably effective for faster gains and feed efficiency in poultry. The NAS/NRC notice further stated "the claims for growth promotion or stimulation are disallowed." Claims for faster gains and/or feed efficiency should be stated as "may result in faster gains and/or improved feed efficiency under appropriate conditions."

FDA concurred in the NAS/NRC findings except that the agency concluded that the appropriate claims for faster weight gains and improved feed efficiency should be "for increased rate of weight gain and improved feed efficiency." The agency further concluded, by memorandum dated November 27, 1972 from Dr. Lehmann to Dr. Van Houweling, that antibiotics that carry the claims for growth promotion and feed efficiency, and that were judged as probably effective for those claims, can be moved into the effective category if the claim is rephrased as follows: "For increase in rate of weight gain and improved feed efficiency," later

changed to "For increased rate of weight gain and improved feed efficiency."

A. L. Laboratories, Inc., submitted supplemental NADA's for which approvals were published in the *Federal Register* of April 10, April 14, April 17, and April 21, 1981 (46 FR 21362, 21748, 22361, and 22754). These supplements contained revised weight gain and feed efficiency claims for chickens, turkeys, pheasants, and quail. However, the published documents failed to reflect these approved revisions. This document reflects the approval and amends the regulations accordingly.

This document also amends the regulations to indicate those conditions of use for which approval for identical poultry products need not include certain types of effectiveness data as required by 21 CFR

514.111(a)(5)(ii)(a)(4). In lieu of those data, approval of such products may require bioequivalency or similar data as suggested in the guideline for submitting NADA's for NAS/NRC reviewed generic drugs.

Because bacitracin methylene disalicylate is currently permitted in 21 CFR 558.76 at 4 to 50 and 5 to 20 grams per ton for growth promotion and feed efficiency in chickens, turkeys, pheasants, and quail, and the revised claim is within that approved usage, approval of this supplement will not result in an increase in the number of food-producing animals receiving medication. BVM concludes that

approval of this supplemental NADA poses no increased human risk from exposure to residues of the new animal drug. Accordingly, under BVM's supplemental approval policy (42 FR 64367; December 23, 1977), this is a Category II supplemental approval which does not require reevaluation of the human safety data supporting the parent application.

BVM has determined pursuant to 21 CFR 25.24(d)(1)(i) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This action is governed by the provisions of 5 U.S.C. 556 and 557 and is therefore excluded from Executive Order 12291 by section 1(a)(1) of the Order.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10 (formerly 5.1; see 46 FR 26052; May 11, 1981)) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), § 558.76(e)(1) is amended in the table by revising items (i) and (ii), to read as follows:

**§ 558.76 Bacitracin methylene disalicylate.**

**(e) Conditions of use. (1) \* \* \***

| Bacitracin methylene disalicylate in grams per ton | Combination in grams per ton | Indications for use                                                                                                                                                                          | Limitations | Sponsors |
|----------------------------------------------------|------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------|----------|
| (i) 4 to 50                                        |                              | 1. Chickens, turkeys, and pheasants; growth promotion and feed efficiency.<br>2. Chickens, turkeys, and pheasants; increased rate of weight gain and improved feed efficiency <sup>1</sup> . |             | 046573   |
| (ii) 5 to 20                                       |                              | 1. Quail, not over 5 weeks of age; growth promotion and feed efficiency.<br>2. Quail, not over 5 weeks of age; increased rate of weight gain and improved feed efficiency <sup>1</sup> .     |             | 046573   |

<sup>1</sup> These conditions are NAS/NRC reviewed and found effective. Applications for these uses may not require effectiveness data as specified by § 514.111 of this chapter, but may require bioequivalency and safety information.

**Effective date.** This regulation is effective August 14, 1981.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: August 7, 1981.

David P. Ducharme,

Acting Associate Director for Scientific Evaluation, Bureau of Veterinary Medicine.

[FR Doc. 81-33648 Filed 8-13-81; 8:45 am]

BILLING CODE 4110-03-M



## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## 26 CFR Part 16A

[T.D. 7778]

## Partial Exclusion for Certain Conservation Cost-Sharing Payments; Correction

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Temporary regulations; correction.

**SUMMARY:** This document corrects errors in the publication of temporary regulations [Treasury Decision 7778] relating to the partial exclusion for certain conservation cost-sharing payments published at 46 FR 27636, May 21, 1981. The text of those temporary regulations also served as the comment document for a notice of proposed rulemaking. This document corrects Treasury Decision 7778. The nature of the corrections are such that they have no effect on the proposed rulemaking.

**FOR FURTHER INFORMATION CONTACT:** Phoebe A. Mix of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224, Attention: CC:LR:T, 202-566-3297, not a toll-free call.

## SUPPLEMENTARY INFORMATION:

## Background

On May 21, 1981, the Federal Register published Treasury Decision 7778 [46 FR 27636] which prescribed temporary regulations relating to the partial exclusion for certain conservation cost-sharing payments. The text of the temporary regulations also served as the text of the proposed regulations under 26 CFR Part 1, (46 FR 27723).

## Need for Correction

Treasury Decision 7778 needs to be corrected to perfect the addition of a new Part 16A [Temporary Income Tax Regulations Relating to the Partial Exclusion for Certain Conservation Cost-Sharing Payments] including setting forth a table of contents. Correction is also necessary to correct errors in the first example which illustrates the method of making the calculations which must be made to determine the amount of income which a taxpayer should report in income as a result of receiving certain conservation cost-sharing payments.

## Drafting Information

The principal author of this correction is Phoebe A. Mix of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service.

## Correction of Treasury Decision

Accordingly, FR Doc. 81-15133 [46 FR 27636] is corrected as follows:

Paragraph 1. On page 27637 third column, the paragraph titled *Proposed amendments to the regulations* is deleted and the following is added in lieu thereof:

## Amendments to the Regulations

Accordingly, the following new part is added to Title 26 of the Code of Federal Regulations:

## PART 16A—TEMPORARY INCOME TAX REGULATIONS RELATING TO THE PARTIAL EXCLUSION FOR CERTAIN CONSERVATION COST-SHARING PAYMENTS

Sec.

16A.128-0 Effective dates.

16A.126-1 Certain cost-sharing payments—in general.

16A.126-2 Section 126 elections.

16A.1255-1 General rule for treatment of gain from disposition of section 126 property.

16A.1255.2 Special rules.

**Authority:** Secs. 126 and 7805 of the Internal Revenue Code of 1954 (92 Stat. 2888, 26 U.S.C. 126; 68A Stat. 917; 26 U.S.C. 7805).

**Par. 2.** On page 27638, 3rd column, Example (1) of § 16A.126-1(g) is corrected to read as follows:

## § 16A.126-1 [Corrected]

\* \* \* \* \*

(g) \* \* \*

**Example (1).** In 1981, 100 acres of the taxpayer's land is reclaimed under a Rural Abandoned Mine Program contract with the Soil Conservation Service of the U.S. Department of Agriculture. The total cost of the improvement is \$700,000. USDA pays \$690,000, the taxpayer \$10,000. The Secretary of Agriculture certifies that 95% of the \$690,000 USDA payment was primarily for the purpose of conservation. Therefore, \$34,500 (\$690,000 × .05) is a nonsection 126 payment. \$150,000 of USDA's payment is compensation for the taxpayer's service in the reclamation project and is includable in gross income as compensation for services. The taxpayer has \$20,000 of allowable deductions in 1981, \$15,500 of which are properly attributable to the USDA payment. Based on all the facts and circumstances, the value of the improvement is \$21,000. The taxpayer elects not to have section 126 apply. The taxpayer computes the amount which is included in gross income as a result of receipt of the improvement as follows:

|     |                                       |           |
|-----|---------------------------------------|-----------|
| (1) | Cost of improvement.....              | \$700,000 |
|     | Nonsection 126 payment.....           | (34,500)  |
|     | Compensation for services.....        | (150,000) |
|     | Current deductions.....               | (15,500)  |
|     | Section 126 cost.....                 | 500,000   |
| (2) | Value of improvement.....             | 21,000    |
|     | Multiplying by section 126 cost.....  | × 500,000 |
|     | Cost of improvement.....              | 700,000   |
|     | Value of section 126 improvement..... | 15,000    |
| (3) | Value of section 126 improvement..... | 15,000    |
|     | (Taxpayer's contribution).....        | 10,000    |
|     | Amount included in gross income.....  | 5,000     |

[Secs. 126 and 7805 of the Internal Revenue Code of 1954 (92 Stat. 2888, 26 U.S.C. 126; 68A Stat. 917; 26 U.S.C. 7805)]

David E. Dickinson,

Director, Legislation and Regulations Division.

[FR Doc. 81-23649 Filed 8-13-81; 8:45 am]

BILLING CODE 4830-01-M

## DEPARTMENT OF LABOR

## Wage and Hour Division, Employment Standards Administration

## 29 CFR Parts 1 and 5

## Wages, Rates and Labor Standards; Further Deferral of Effective Dates of Regulations

**AGENCY:** Wage and Hour Division, Labor.

**ACTION:** Notice of further deferral of effective dates of regulations.

**SUMMARY:** The Department of Labor further defers the effective dates of two final rules, 29 CFR Parts 1 and 5, from August 15, 1981 (see 46 FR 36140, July 14, 1981), until action is taken on today's proposed rules.

This action is taken in order to permit proposed rulemaking which appears in today's issue of the Federal Register.

For complete information on these actions see the following Federal Register documents in Parts VII and VIII of this issue of the Federal Register.

1. FR Document No. 81-23735 (29 CFR Part 1) [Part VII of this issue].

2. FR Document No. 81-23736 (29 CFR Part 5) [Part VIII of this issue].

**EFFECTIVE DATE:** The effective dates of these rules are deferred until action is taken on today's proposed rules. The effective date of this deferral is August 14, 1981.



**ADDRESS:** William M. Otter, Administrator, Wage and Hour Division, Employment Standards Administration, Frances Perkins Department of Labor Building, Room S-3502, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

**FOR FURTHER INFORMATION CONTACT:** William M. Otter, Telephone: (202) 523-8305.

**SUPPLEMENTARY INFORMATION:** In the Federal Register of February 6, 1981 (46 FR 11253-11254) the Department of Labor published a notice deferring the effective dates of Parts 1 and 5 of Title 29 of the Code of Federal Regulations (29 CFR Parts 1 and 5) until March 30, 1981. This action was taken in response

to a January 29, 1981 Memorandum from President Reagan in order to allow a full and appropriate review of these rules.

Thereafter, the Department published additional notices delaying implementation of these regulations until August 15, 1981 in order to reconsider these rules pursuant to Executive Order 12291. See 46 FR 18973 (March 27, 1981); 46 FR 23739 (April 28, 1981); 46 FR 33514 (June 30, 1981); 46 FR 36140 (July 14, 1981).

This document will further defer the effective dates of these regulations until action is taken on today's proposed rules.

Since these regulations have never gone into effect and since the agency is

proposing to revise these regulations for the reasons stated, it is inappropriate and contrary to the public interest to require compliance with these regulations during the period until a final determination is made. Under the circumstances, separate notice and public comment on this further deferral of the effective date is impracticable and unnecessary and good cause exists for making these postponements effective immediately. This finding is made pursuant to 5 U.S.C. 553(b)(3)(B).

The following chart contains a description of each of the rules being deferred by this notice:

| Rule             | Subject                                                                                                                                                                                                                                         | Original publication of rule in final form | Previously scheduled effective date | New effective date                                    |
|------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------|-------------------------------------|-------------------------------------------------------|
| 1. 29 CFR Part 1 | Procedure for Predetermination of Wage Rates                                                                                                                                                                                                    | Jan. 16, 1981 (46 FR 4306)                 | Aug. 15, 1981                       | Deferred until action taken on today's proposed rule. |
| 2. 29 CFR Part 5 | Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (Also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act) | Jan. 16, 1981 (46 FR 4380)                 | Aug. 15, 1981                       | Deferred until action taken on today's proposed rule. |

#### Authority

The statutory authority for this action is as follows:

- As to 29 CFR Part 1: 5 U.S.C. 301; R.S. 161, 64 Stat. 1267; Reorganization Plan No. 14 of 1950, 5 U.S.C. Appendix; 29 U.S.C. 259; 40 U.S.C. 276a-276a-7; 40 U.S.C. 276c; and the laws listed in Appendix A of Part 1.
- As to 29 CFR Part 5: 40 U.S.C. 276a-276a-7; 40 U.S.C. 276c; 40 U.S.C. 327-332; Reorganization Plan No. 14 of 1950, 5 U.S.C. Appendix; 5 U.S.C. 301; and the statutes listed in section 5.1(a) of Part 5.

Signed at Washington, D.C. this 12th day of August 1981.

Raymond J. Donovan,

Secretary of Labor.

Robert B. Collyer,

Deputy Under Secretary of Labor for Employment Standards.

(PR Doc. 81-2363 Filed 8-13-81; 8:45 am)

BILLING CODE 4510-27-M

#### 29 CFR Part 4

#### Labor Standards for Federal Service Contracts; Further Deferral of Effective Date of Regulation

**AGENCY:** Wage and Hour Division, Labor.

**ACTION:** Notice of further deferral of effective date of regulation.

**SUMMARY:** The Department of Labor further defers the effective date of a final rule, 29 CFR Part 4, from August 15, 1981 (see 46 FR 36140, July 14, 1981), until action is taken on proposed revisions to the rule.

This action is taken in order to permit proposed rulemaking which appears in today's issue of the Federal Register.

For complete information on this action see the following Federal Register document in Part IV of this issue of the

Federal Register: FR Document No. 81-23495 (29 CFR Part 4).

**EFFECTIVE DATE:** The effective date of this rule is deferred until action is taken on today's proposed rule. The effective date of this deferral is August 14, 1981.

**ADDRESS:** William M. Otter, Administrator, Wage and Hour Division, Employment Standards Administration, Frances Perkins Department of Labor Building, Room S-3502, 200 Constitution Avenue, NW., Washington, D.C. 20210.

**FOR FURTHER INFORMATION CONTACT:** William M. Otter, Telephone: (202) 523-8305.

**SUPPLEMENTARY INFORMATION:** In the Federal Register of February 12, 1981 (46 FR 11971) this Department published a notice deferring (staying) the effective date of Part 4 (including § 4.133) of Title 29 of the Code of Federal Regulations (29 CFR Part 4) until April 17, 1981 to permit further review of the rule. Thereafter, the Department published

additional notices delaying the implementation of this regulation until August 15, 1981 in order to reconsider these rules pursuant to Executive Order 12291. See 46 FR 18973 (March 27, 1981); 46 FR 23739 (April 28, 1981); 46 FR 33515 (June 30, 1981); 46 FR 36140 (July 14, 1981).

This document will further defer the effective date of this regulation until action is taken on today's proposed rule.

Since this regulation has never gone into effect and since the agency is proposing to revise this regulation for the reasons stated, it is inappropriate and contrary to the public interest to require compliance with this regulation during the period until a final determination is made. Under the circumstances, separate notice and public comment on this further deferral of the effective date is impracticable and unnecessary and good cause exists for making this postponement effective



immediately. This finding is made pursuant to 5 U.S.C. 553(b)(3)(B).

The following chart contains a description of each of the rules being

deferred by this notice:

| Rule             | Subject                                                              | Original publication of rule in final form                 | Previously scheduled effective date | Now effective date                                       |
|------------------|----------------------------------------------------------------------|------------------------------------------------------------|-------------------------------------|----------------------------------------------------------|
| 1. 29 CFR Part 4 | Service Contract Act, Labor Standards for Federal Service Contracts. | Jan. 16, 1981 (46 FR 4320) and Jan. 19, 1981 (46 FR 4886). | Aug. 15, 1981                       | Deferred until action is taken on today's proposed rule. |

#### Authority

The statutory authority for this action is as follows: 41 U.S.C. 31 *et seq.*, 79 Stat. 1034, as amended in 86 Stat. 789, 90 Stat. 2358; 41 U.S.C. 38 and 39; and 5 U.S.C. 301.

Signed at Washington, D.C. this 12th day of August 1981.

Raymond J. Donovan,

Secretary of Labor.

Robert B. Collyer,

Deputy Under Secretary of Labor for Employment Standards.

[FR Doc. 81-23864 Filed 8-13-81; 8:45 am]

BILLING CODE 4510-27-M

#### Office of the Secretary

##### 29 CFR Part 6

**Labor Standards in Federal and Federally Assisted Construction Contracts and Federal Service Contracts; Administrative Proceedings; Further Deferral of Effective Date of Regulation**

**AGENCY:** Office of the Secretary, Labor.

**ACTION:** Notice of further deferral of effective date of regulation.

**SUMMARY:** The Department of Labor further defers the effective date of a final rule, 29 CFR Part 6, from August 15, 1981 (see 46 FR 36140, July 14, 1981), until action is taken on proposed revisions to the rule.

This action is taken in order to permit proposed rulemaking which appears in today's issue of the *Federal Register*.

For complete information on this action see the following *Federal Register* document in Part V of this issue of the *Federal Register*: FR Document No. 81-23496 (29 CFR Part 6).

**EFFECTIVE DATE:** The effective date of this rule is deferred until action is taken

on today's proposed rule. The effective date of this deferral is August 14, 1981.

**ADDRESS:** Alvin Bramow, Deputy Associate Solicitor, Division of General Legal Services, Office of the Solicitor, Department of Labor, Room N2464, Frances Perkins Department of Labor Building, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

**FOR FURTHER INFORMATION CONTACT:** Gail V. Coleman, Counsel for Contract Labor Standards, Division of General Legal Services, Office of the Solicitor, Department of Labor, Room N2464, Frances Perkins Department of Labor Building, 200 Constitution Avenue, N.W., Washington, D.C. 20210, Phone 202-523-8268.

**SUPPLEMENTARY INFORMATION:** In the *Federal Register* of February 6, 1981 (46 FR 11253-11254) the Department of Labor published a notice deferring the effective date of Part 6 of Title 29 of the Code of Federal Regulations (29 CFR Part 6) until March 30, 1981. This action was taken in response to a January 29, 1981 Memorandum from President Reagan in order to allow for a full and appropriate review of this rule.

Thereafter, the Department published additional notices delaying

implementation of this regulation until August 15, 1981 in order to reconsider these rules pursuant to Executive Order 12291. See 46 FR 18973 (March 27, 1981); 46 FR 23739 (April 28, 1981); 46 FR 33514 (June 30, 1981); 46 FR 36140 (July 14, 1981).

This document will further defer the effective date of this regulation until action is taken on today's proposed rule.

Since this regulation has never gone into effect and since the agency is proposing to revise this regulation for the reasons stated, it is inappropriate and contrary to the public interest to require compliance with this regulation during the period until a final determination is made. Under the circumstances, the separate notice and public comment on this further deferral of the effective date is impracticable and unnecessary and good cause exists for making this postponement effective immediately. This finding is made pursuant to 5 U.S.C. 553(b)(3)(B).

The following chart contains a description of each of the rules being deferred by this notice:

| Rule             | Subject                                                                                                                                                           | Original publication of rule in final form | Previously scheduled effective date | Now effective date                                       |
|------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------|-------------------------------------|----------------------------------------------------------|
| 1. 29 CFR Part 6 | Rule of Practice for Administrative Proceedings Enforcing Labor Standards in Federal and Federally Assisted Construction Contracts and Federal Service Contracts. | Jan. 16, 1981 (46 FR 4398).                | Aug. 15, 1981                       | Deferred until action is taken on today's proposed rule. |

#### Authority

The statutory authority for this action is as follows: Sections 4 and 5, 79 Stat. 1034, 1035 as amended by 86 Stat. 789, 790, 41 U.S.C. 353 and 354; 5 U.S.C. 301; Reorg. Plan No. 14 of

1950, 64 Stat. 1267, 5 U.S.C. Appendix; 46 Stat. 1494, as amended by 49 Stat. 1011, 78 Stat. 238, 40 U.S.C. 276a-276a-7; 76 Stat. 357-359, 40 U.S.C. 327-332; 48 Stat. 949, as amended by 63 Stat. 108, 72 Stat. 967, 40 U.S.C. 276c.

Signed at Washington, D.C. this 12th day of August 1981.

Raymond J. Donovan,

Secretary of Labor.

[FR Doc. 81-23865 Filed 8-13-81; 6:45 am]

BILLING CODE 4510-23-M



# Occupational Safety and Health Administration

## 29 CFR Part 1952

### Approval of Supplement to Virgin Islands State Plan

**AGENCY:** Occupational Safety and Health Administration, Labor.

**ACTION:** Final rule.

**SUMMARY:** This notice announces the approval of the completion of a developmental step under the Virgin Islands Occupational Safety and Health Plan. The completed developmental step relates to the implementation of the plan's enforcement program.

**EFFECTIVE DATE:** August 14, 1981.

**FOR FURTHER INFORMATION CONTACT:** John Smith/Dorothy J. Johnson, Project Officers, Office of State Programs, Occupational Safety and Health Administration, 200 Constitution Avenue NW, Washington, D.C. 20210, (202) 523-8081.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Virgin Islands Occupational Safety and Health Plan was approved under Section 18(c) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667(c) (hereinafter referred to as the Act) and Part 1902 of this Chapter on September 11, 1973 (38 FR 24896). Part 1953 of this Chapter provides procedures for the review and approval of change supplements by the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary).

##### Description of Supplement

Enforcement Program. The Virgin Islands had previously completed its developmental step pertaining to operation of its enforcement program. Enforcement inspections were commenced in April 1974. This does not mean that the plan has achieved operational status pursuant to 29 CFR 1954.3, but merely that enforcement inspections have been commenced by the State.

##### Location of the Plan and Its Supplements for Inspection and Copying

A copy of these supplements, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of State Programs, Occupational Safety and Health Administration, Room N-3613, 200 Constitution Avenue, N.W., Washington, D.C. 20210; Office of the Regional Administrator, Occupational Safety and

Health Administration, Room 3445, 1515 Broadway, New York 10036; Department of Labor, Occupational Safety and Health Division, Building No. 1, Second Floor, Government Complex, Room 207, Lagoon Street, Frederiksted, St. Croix, Virgin Islands, 00840.

#### Public Participation

Under § 1953.2 of this chapter, the Assistant Secretary may prescribe alternative procedures to expedite the review process or for any other good cause which may be consistent with applicable law. The Assistant Secretary finds that the Virgin Islands plan supplement described above is consistent with commitments contained in the approved plan, which were previously made available for public comment. Accordingly, it is found that further public comment is unnecessary.

#### Decision

After careful consideration, the Virgin Islands plan supplement described above is hereby approved under 29 CFR Part 1953. This decision incorporates the requirements of the Act and implementing regulations applicable to State plans generally. In addition, Subpart S of 29 CFR Part 1952 is hereby amended to reflect the completion of this developmental step. Accordingly, § 1952.254 is hereby amended by adding paragraph (l) as follows:

#### § 1952.254 Completed developmental steps.

(l) In accordance with § 1952.253(d), the safety enforcement program in the Virgin Islands was operational in April 1974.

The supplement was approved by the Assistant Secretary on August 3, 1981.

(Sec. 15, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667))

Signed at Washington, D.C. this 3d day of August 1981.

Thorne G. Auchter,  
Assistant Secretary of Labor.

[FR Doc. 81-23709 Filed 8-13-81; 8:45 am]

BILLING CODE 4510-26-M

#### DEPARTMENT OF THE INTERIOR

##### Office of Surface Mining Reclamation and Enforcement

### 30 CFR Parts 716 and 785

#### Surface Coal Mining and Reclamation Operations Initial and Permanent Regulatory Program; Deferral of Effective Dates

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Deferral of effective dates.

**SUMMARY:** The effective dates of final regulations which were previously deferred at 46 FR 18023 (March 23, 1981), 46 FR 20211 (April 3, 1981), 46 FR 23924 (April 29, 1981), and 46 FR 31258 (June 15, 1981) are further postponed until September 28, 1981, and September 29, 1981, (see below) to allow OSM additional time to comply with Executive Order 12291 (February 17, 1981). The regulations deal with the prime farmland exemption and prime farmland definitions of OSM's initial and permanent regulatory programs.

**DATES:** The new effective date of 30 CFR 716.7(a) and (b) as published on January 22, 1981, is September 28, 1981, and of 30 CFR 716.7(a)(2) and 785.17(a) as published on January 23, 1981, is September 29, 1981.

**FOR FURTHER INFORMATION CONTACT:** LeRoy de Moulin, Soil Scientist, Office of Surface Mining, Department of the Interior, Washington, D.C. 20240, (202) 343-5261.

**SUPPLEMENTARY INFORMATION:** These regulations have been the subject of several Federal Register notices on suspension and effective dates as follows: Notice of Suspension of Certain Regulations, 44 FR 67942 (November 27, 1979); Notice of Suspension, 44 FR 77454 (December 31, 1979); Extension of Effective Dates for Final Rules, 46 FR 10707 (February 4, 1981); Notice of Suspension of Certain Rules, 46 FR 18023 (March 23, 1981); Cancellation of Prior Notice and Deferral of Effective Dates for Final Rules, 46 FR 20211 (April 3, 1981); Continued Suspension of Final Rules, 46 FR 23924 (April 25, 1981) and Deferral of Effective Dates, 46 FR 31258 (June 15, 1981). Voluminous comments received from the public during the comment period which ended May 9, 1981, required the deferral of the effective dates for an additional 60 days to enable OSM to analyze thoroughly the public comments and decide whether to modify, issue or suspend these rules indefinitely pending the outcome of further rulemaking. However, due to additional requirements of Executive Order 12291 (February 19, 1981), OSM finds it necessary to extend the effective date an additional 45 days.

Dated: August 11, 1981.

J. S. Giles,  
Deputy Director, Office of Surface Mining.

[FR Doc. 81-23736 Filed 8-13-81; 8:45 am]

BILLING CODE 4310-05-M



## DEPARTMENT OF TREASURY

## Office of Revenue Sharing

## 31 CFR Part 51

## Handicapped Discrimination Regulations—Issuance With Interim Effect

**AGENCY:** Office of Revenue Sharing, Treasury.

**ACTION:** Interim rule.

**SUMMARY:** The substantive provisions of the Revenue Sharing handicapped discrimination regulations take effect on an interim basis pending reconsideration of the HEW government-wide guidelines. Certain administrative requirements and one substantive provision will be deferred indefinitely pending completion of the reconsideration.

**EFFECTIVE DATE:** August 14, 1981.

**DATE:** Comments concerning this interim regulation will be accepted until October 13, 1981.

**ADDRESS:** Send comments to: Chief Counsel, Office of Revenue Sharing, Treasury Department, 2401 E. St., N.W., 15th Floor, Washington, D.C. 20226.

**FOR FURTHER INFORMATION CONTACT:**

Richard S. Isen, Chief Counsel

(Designate); or

Jacqueline L. Jackson, Attorney, Office of Chief Counsel for Revenue Sharing, Treasury Department, Washington, D.C. 20226 (202) 634-5182.

**SUPPLEMENTARY INFORMATION:****Background**

Pursuant to the case of *Paralyzed Veterans of America, et al. v. Smith, et al.*, et al., United States District Court, Central District of California, No. 79-1979 WPG, the final Revenue Sharing handicapped discrimination regulations (31 CFR 51.55) published on January 5, 1981 (46 FR 1120-1129) are in effect on an interim final basis as of the date of this notice, except for the following subsections: 51.55(b)(1)(ix), 51.55(c), 51.55(d), 51.55(e), 51.55(f), 51.55(k)(4), 51.55(k)(5), and 51.55(k)(6). The effective date of these enumerated subsections remains deferred as provided in the notice published on June 16, 1981 (46 FR 31409).

The public is advised that the Department of Justice is reviewing the HEW government-wide guidelines for handicapped discrimination enforcement (45 CFR Part 85) pursuant to the Executive Orders 12291 entitled "Federal Regulation," and 12250 entitled "Leadership And Coordination of Federal Nondiscrimination Laws." Any amendments to the Revenue Sharing

regulations resulting from this review will be made in accordance with those Executive Orders.

In lieu of the decision in *Paralyzed Veterans of America, et al. v. Smith, et al.*, et al., a regulatory impact analysis has not been prepared under Executive Order 12291.

**Request for Comments**

Comments are requested concerning provisions of the regulations that should or should not take effect. Comments are also requested on recommended revisions to the regulations. Lastly, comments are requested concerning the economic impact of the regulations. Consideration will be given to all comments received within 60 days of the issuance of this notice.

**Authority**

This notice is issued under the authority of the State and Local Fiscal Assistance Act of 1972, as amended (31 U.S.C. 1221 *et seq.*) and Treasury Department Order No. 224 (January 26, 1973) (33 FR 3342) as amended by Treasury Department Order No. 242 Revision No. 1, May 17, 1977.

Dated: August 12, 1981.

Judith A. Denny,

Acting Director, Office of Revenue Sharing.

Robert W. Rafuse, Jr.,

Deputy Assistant Secretary (State and Local Finance).

[FR Doc. 81-23926 Filed 8-13-81; 8:45 am]

BILLING CODE 4810-28-M

**POSTAL SERVICE**

## 39 CFR Part 111

## Preparation Requirements for Third-Class 5-Digit ZIP Code Presorted Mail

**AGENCY:** Postal Service.

**ACTION:** Final rule.

**SUMMARY:** This rule amends regulations in the Domestic Mail Manual governing the preparation of third-class bulk mail sent at the five-digit ZIP Code presort level rate. The regulation changes are necessary to relieve a significant increase in sack workload at the Bulk Mail Centers (BMCs). In general, the rule raises the minimum quantities per sack and changes preparation requirements for the bulk third-class five-digit presort rate as follows:

(1) For destinations other than unique 3-digit ZIP Code cities, the minimum sack quantity is raised from the current 10 pieces to 50 pieces or 15 pounds to a single five-digit ZIP Code destination, in a five-digit ZIP Code sack;

(2) For unique 3-digit ZIP Code city destinations (codes not shared with other offices), separate packages of at least 10 pieces of mail to the same 5-digit ZIP Code within that 3-digit city may be combined with other such packages for other 5-digit codes within the same city to meet the 50-piece or 15 pound minimum, in a unique 3-digit multi-code city sack. However, quantities in excess of 50 pieces or 15 pounds for a single 5-digit ZIP Code within the 3-digit unique coded city must be separately prepared in a five-digit sack.

**EFFECTIVE DATE:** September 13, 1981.

**FOR FURTHER INFORMATION CONTACT:**

Don Mumma of the Office of Mail Classification, 202/245-4353.

**SUPPLEMENTARY INFORMATION:** On July 2, 1981, the Postal Service published for comment in the Federal Register proposed changes to Parts 620 and 660 of the Domestic Mail Manual (DMM) as described above (46 FR 34600-34603). Interested persons were invited to submit written comments concerning the proposed changes by August 1, 1981.

Written comments were received from 62 individuals and organizations. Forty-two of the comments were from individual commercial mailers (including mail preparation companies), five were from organizations representing third-class mailers, and fifteen were from a major labor organization and its affiliates.

Nine commenters expressed general support for the regulations as proposed by the Postal Service. While one of these commenters felt that the minimum quantity of pieces per sack should be 100, rather than the 50 proposed by the Postal Service, the mailers in support of the proposed minimum quantity basically agreed with one mailer's statement that "we have found that any mailing using a minimum piece requirement below 50 pieces has not been cost effective to process due to the extra labor costs involved for sorting, tying and bag tag processing."

Nineteen commenters expressed their concurrence with the Postal Service's need to take some action to alleviate the operational difficulties described in the proposed rule, but felt that the 50 piece/15 pound minimum quantity was too high. Sixteen of these commenters supported a 30 piece minimum, while three favored minimum quantities of 20 or 25 pieces. Many of the commenters who supported an increase in the minimum quantity requirement from 10 pieces per sack to 20 or 30, as well as several commenters who were opposed to any change in the minimum quantity



required, apparently misunderstood the nature of the operational difficulties which the Postal Service is experiencing at this time. These mailers thought that the regulation changes are caused by a shortage of sacks in the postal system. As the Postal Service outlined in the proposed rule, however, the critical operational problem which must be resolved at this time is the substantial overload on sack-sorter equipment at the Bulk Mail Centers (BMCs), rather than problems related to supplying sack equipment to mailers. The problem of equipment availability is manageable through planned procurement of equipment, improved inventory control of present equipment supplies, and mailer cooperation in avoiding the tendency to hoard sacks. All of these efforts are currently underway. However, an increase in the availability of sacks will not alleviate the sack-sorter workload problem; rather, an increase in the number of sacks available for use will exacerbate the real overload problems at the BMCs. It was thus necessary for the Postal Service to seek other solutions to the workload problem.

As stated in the proposed rule, during the spring of 1981, a number of BMCs were operating above their usual facility capacity at a time when volume would normally be dropping off. Observations were conducted to determine both the extent of the problem and the reason behind it. The volume of bulk third-class mail has been steadily increasing in recent years. This growth was anticipated and operational plans have been developed and implemented to handle the planned additional volume. However, the sudden and substantial increase in the number of sacks used in the preparation of bulk third-class 5-digit presort mail was not anticipated. It is this increase in the number of sacks flowing into the system which has caused the operational problems which the Postal Service must resolve. It was determined that the severe overload on the sack-sorter equipment at the BMCs was almost entirely attributable to bulk third-class mail sent at the 5-digit ZIP Code presort level rate which was contained in "skin sacks" (sacks containing small quantities of mail; generally less than  $\frac{1}{2}$  full).

Generally, third-class mail volume begins a seasonal decline early in March, which "bottoms out" during late May and early June. Volume and the resultant workload begins a gradual increase at that time, with the annual "peak" volume period occurring during September and October. This year, however, the late spring decline in

workload did not occur. Since early March, the workload at the BMCs has been increasing rather than declining, so that by early May the BMC workload exceeded the normal "peak" period by more than ten percent. The increase in the workload at the BMCs is expected to continue through the end of this fiscal year, and into the next. The workload during the "peak" period this year is expected to exceed the normal "peak" workload at the BMCs by about 40 percent. The Postal Service is extremely concerned that unless immediate steps are taken to alleviate the workload problems at the BMCs, it will be forced either to turn to less efficient and more costly procedures for handling the excess sack volume or let the mail back up. We believe that mailers would object strongly to delays in the mail. Accordingly, the latter solution is no solution. Since observations showed that the problem was largely due to bulk third-class "skin sacks" sent at the 5-digit presort level rate, it was determined that the most effective and least onerous solution was one affecting only that category of mail.

As described in the proposed rule, several different levels were considered in setting new minimum quantities for 5-digit ZIP Code presort level rate sacks. In considering an outside limit of a 100-piece minimum, about 80% of the third-class "skin sacks" would be eliminated and the workload at the BMCs would be reduced by approximately 20 percent, which is more than adequate to resolve the capacity problem. However, the Postal Service considered the potential impact on mailers at this level to be too severe if an adequate, even if less complete, remedy could be found. Moreover, a shift of substantial third-class volume from the 5-digit rate and 5-digit sacks to three-digit sacks (and therefore the basic rate) would have the adverse effect of increasing package handlings at sectional center facilities (SCFs).

At the other extreme, as the Postal Service stated in its July 2, 1981, proposed rule, a 30-piece minimum quantity was seriously considered. Although a 30-piece minimum would reduce the bulk third-class "skin sack" problem by about 50 percent, the resulting impact on the sack-sorter workload at the BMCs would be only a little over 11%. This would not provide the relief necessary to reduce the sack-sorter overload to a workload level, and could lead to widespread need for costly and inefficient manual sack processing.

At the 50-piece level, the bulk third-class "skin sack" volume would be reduced by about 70 percent. This would

produce nearly a 16% reduction in the BMC sack-sorter workload. This level would reduce sack-sorter volumes to a point where they would approximate the volume levels experienced during April-June this year. While such levels are somewhat in excess of capacity, the Postal Service considers them to be barely manageable. We anticipate that about 35% of bulk third-class five-digit rate mail will be affected by a 50-piece minimum quantity. The Postal Service is certainly concerned about the impact of any change in preparation requirements on mailer operations. Every effort has been made in this rulemaking to change as little as possible. Thus, only the subclass and rate level found to be primarily responsible for the overload of "skin sacks" is affected by this change. Moreover, the Postal Service will continue to monitor the sack-sorter workload at the BMCs. If it is found that a lower minimum quantity can be permitted without burdening the sack-sorter workload beyond control, the appropriate steps will be taken to reduce the minimum quantity requirement further. At this time, however, the Postal Service believes that a minimum quantity level below 50 pieces (or 15 pounds as explained in the proposed rule) places undue burdens on the equipment capacity at the BMCs and threatens to harm the entire bulk mail system. Failure to make this change in the near future would force the Postal Service to turn to expensive manual sack processing at the BMCs, which could distort the costs for third-class five-digit presort mail in the long run.

Four commenters suggested that the exception permitting 5-digit packages to be contained in sacks destined for unique 3-digit ZIP Code cities be extended to include 5-digit presort level rate packages sacked to any 3-digit destination. This suggestion would greatly increase the amount of package handling which occurs at sectional center facilities (SCFs). A substantial increase in package handling at the SCFs is outside of the scope of the basic rate structure and classification system for 5-digit presorted bulk third-class mail. In addition, a substantial increase in the amount of package handling at the SCFs could significantly affect future costs and rates. This suggestion will not be adopted in this rulemaking.

Three commenters questioned the stipulation contained in the unique 3-digit city exception that requires 50 pieces or more to the same 5-digit destination to be separately sacked to the 5-digit level. The Postal Service has determined that the provision in the unique 3-digit exception should not be



changed. As was explained in the proposed rule, there is some benefit realized when sacks are prepared to the five-digit level. The Postal Service granted the latitude of permitting the commingling of smaller amounts of 5-digit packages in unique 3-digit sacks primarily as a means of lessening the adverse impact of the preparation changes on mailers. However, the Postal Service does not want to eliminate all of the advantages of 5-digit sacking such as decentralization of incoming secondary sorting to stations and branches for purposes of workload leveling.

One commenter suggested that the proposed regulations be clarified to ensure that post offices do not require a minimum of 15 pounds in each sack. Since the regulation clearly states that the minimum quantity of mail to a sack is 50 pieces or 15 pounds (emphasis added), the Postal Service does not consider further clarification necessary. The commenter also suggested that a listing of the unique 3-digit ZIP Code cities be issued with the regulation. Section 667.42(2) references Exhibit 122.634 of the Domestic Mail Manual, where such unique 3-digit cities are listed. The Postal Service considers it unnecessary and repetitive to include this list in section 667. A copy of Exhibit 122.634 has been sent to this commenter.

Five of the labor organization affiliates and one other commenter suggested that the proposed changes should be handled through the Postal Rate Commission. The Postal Service believes that it has the authority to change mail preparation requirements such as those regarding sacking. The present changes are adjustments to previous changes published in October, 1979 (44 FR 60727-60740), which put the current sacking requirements into effect in order to encourage worksharing efforts by mailers. The ability to manage details such as sacking provisions is a part of the Postal Service's operating responsibility and authority which is essential for the efficient management of the vast postal system. Postal management requires and has the authority to react in a timely manner to operational innovations, sudden changes in volume or mail makeup, and other situations which require prompt action. This type of change is not like rate or classification matter requiring Postal Rate Commission action. We cannot believe that these commenters would continue in the same view if actually faced with the consequences of having the bulk mail processing system completely swamped under a sea of 10-piece sacks.

One commenter, a mailer of nonidentical weight metered pieces, was under the mistaken impression that he would have to alter his preparation methods for bulk third-class mail even though he does not mail at the 5-digit presort level rate. However, this final rule affects only bulk third-class mail sent at the 5-digit ZIP Code presort level rate.

Fourteen commercial mailers opposed any change in the 10-piece minimum quantity level for 5-digit ZIP Code presort rate third-class mail. Most of these mailers shared the misunderstanding regarding the nature of the problem as a sack shortage rather than a workload capacity problem. As explained earlier in this final rule, the difficulty which the Postal Service seeks to control within this rulemaking is one of equipment workload. Several of these commenters expressed concern that a rise in the minimum quantity requirements would hurt their ability to participate in the presort program for bulk third-class mail. The Postal Service realizes that this may be an unfortunate result of this rulemaking. However, we feel that a capacity overload so severe as to threaten the Postal Service's ability to process all bulk mail would be a much more unwelcome result. Over the long term, the increases in costs (and therefore rates) and the reduction in service which such an overload could be expected to produce would be more damaging to the attractiveness of this presort program for many mailers than this rule change should be.

A few commenters proposed complex mail preparation schemes as alternatives to raising the minimum quantity level. The Postal Service is examining these proposals in detail, but considers them far too complex to administer or to be considered as nationwide solutions at the present time when a crisis situation is imminent. If it is found that alternative proposals would produce beneficial results, on a limited or nationwide basis without creating undue complexity in Postal Service requirements, these alternative proposals may be implemented. Adequate solution of the present and immediately forthcoming workload capacity problems is not possible with the alternatives suggested by these commenters.

Fourteen commenters, all affiliated with a major labor organization, provided comments in opposition to the proposed change. The comments of the fourteen affiliates and of the parent organization were essentially the same. In addition to a misunderstanding that the problem was largely one of sack

shortages, the labor organizations expressed concern about the impact of the proposed changes on their ability to take advantage of the bulk third-class 5-digit presort level rate. The labor organizations apparently feel that the impact of the proposed rule will be felt most severely by small mailers. The Postal Service does not believe this to be the case since density of mail coverage rather than size of the mailer business is the determining factor in sack preparation. Many small bulk third-class mailers, particularly those whose mailings are localized, should have no problem in meeting the new requirements. Furthermore, several large volume mailers, with annual volumes of over 150 million pieces, also expressed opposition to the change. It appears that the impact of the proposed rule turns more on the type than the size of the business.

Certain of the labor organization comments lead us to believe there may have been some misunderstanding regarding the impact of the proposed rule on the mailings of these organizations. Half of the organizations discussed the impact of the proposed rule on their journals, publications, or newsletters. These types of mailings qualify for second-class mail, which is not affected by this rulemaking. Only one of the labor organizations alluded to bulk third-class mailings in its comments. Further evidence of misunderstanding regarding the types of mail affected by this change is suggested by the relative volumes of second- and third-class mail entered by these organizations during the past several years. Three of the organizations have no record of third-class mailings for the past several years and two have not applied for the necessary permits. In fact, for these organizations, the ratio of second- to third-class volume is approximately 10 to 1. The Postal Service does not believe, therefore, that the impact of the proposed rule on the labor organization commenters will be as great as they may have foreseen.

Several commenters requested a "grace period" of from 60 to 120 days before the increase in the minimum quantity requirement is implemented. Due to the severe nature of the capacity overload, and the fact that the "peak" volume period occurs during September and October, a lengthy grace period cannot be granted. The Postal Service is convinced that the sack-sorter workload problem has reached such a magnitude that immediate emergency implementation would be warranted. However, in appreciation of the fact that mailers need some lead time to prepare



bulk third-class mailings, the Postal Service has set implementation for thirty days from the date of publication of the final rule. While capacity problems are anticipated during that thirty-day period, the Postal Service hopes that mailer cooperation will help to alleviate the temporary crisis situation. In that regard, all third-class mailers have been on notice at least since the proposed rule was published on July 2, 1981, that serious problems exist and that an increase in the minimum requirements could be expected quickly. Moreover, as described in the proposed rule, representatives of major third-class organizations were apprised and consulted concerning both the problem and the need for rapid relief even before the publication of the proposed rule. The mailer representatives agreed that the only possible short term solutions would be either an increase in the minimum quantity requirement or a move to manual sack processing. None of the representatives favored the latter option.

In comparison to a hypothetical system which could run smoothly with 5-digit presort rates for as little as 10 or even 30 pieces per sack, what this rulemaking requires will cause significant hardship for many mailers; we recognize that. But experience has now shown that smooth-running, cost-efficient service under a flood of "skin sacks" is not a realistic option, whatever we do. We simply cannot provide satisfactory service this September and October without relief from the recent surge in the "skin sack" workload, which continues to boom as the peak mailing period nears. Many, or most, of the negative comments received in this rulemaking seem to have assumed that the crisis either is not real or can be tolerated with more modest adjustments. We heartily wish this were true. Our responsibility for managing the work and providing the service forces us to act on our assessment that the measures described are the minimum necessary to do the job.

In view of the considerations discussed above, the Postal Service hereby adopts the following changes to Part 620 and Part 660 of the Domestic Mail Manual, which is incorporated by reference in the Federal Register. 39 CFR 111.1.

The changes are effective on September 13, 1981, although mailers are permitted, and encouraged, to adopt them before that time.

#### PART 620—CLASSIFICATION

In 622.1, revise 622.12 to read as follows:

#### 622.1 Eligibility.

.12 Five-Digit Presort Level  
a. Minimum Quantity. Each mailing must consist of at least 200 pieces or 50 pounds of mail presorted to 5-digit destinations. Each piece must be part of a package of 10 or more pieces to the same 5-digit ZIP Code and the package must be sacked to the same 5-digit ZIP Code. Each sack must contain a minimum of 50 pieces or 15 pounds of mail to the same 5-digit ZIP Code in order to be eligible for the 5-digit presort level rate. Exception: mailers may commingle different 5-digit packages of 10-50 pieces in sacks for unique 3-digit multi-ZIP Code cities listed in Exhibit 122.634 providing:

- (1) each sack contains at least 50 pieces or 15 pounds of mail, and
- (2) no 3-digit city packages are included in the sack, and
- (3) 50 pieces or 15 pounds of mail for a single 5-digit ZIP Code (within the unique 3-digit city) must be sacked separately.

#### Part 660—Preparation Requirements

In 667, revise .42 to read as follows:

#### 667.4 Preparation Requirements for Five-Digit Presort Level Rate.

.42 Sacking. All qualifying packages of 10 or more pieces must be placed in a sack. Each sack must contain at least 50 pieces or 15 pounds of mail. Sacks may be prepared in one of two ways, as follows:

- (1) If there are 50 pieces or 15 pounds of mail to a single 5-digit ZIP Code destination, they must be placed in a 5-digit sack. Five-digit sacks containing less than 50 pieces or 15 pounds may not be made. The sack must be labeled in the following manner:

Line 1: City, State and 5-Digit ZIP Code Destination.  
Line 2: Contents.  
Line 3: Office of Mailing.

Sample: ARLINGTON, VA 22202  
3C LTRS  
BOSTON, MA 021

- (2) If a mailer has less than 50 pieces or 15 pounds to the same 5-digit ZIP Code, and if that 5-digit ZIP Code is included in a unique 3-digit multi-coded city listed in Exhibit 122.634, packages of that mail may be included in a sack containing other 5-digit packages within the unique 3-digit ZIP Code city. Each

sack must contain at least 50 pieces or 15 pounds of 5-digit presorted mail. No 3-digit city packages may be included in the sack. The sack must be labeled in the following manner:

Line 1: City, State and unique 3-digit city ZIP Code.

Line 2: Contents—5-DIGIT PKGS.

Line 3: Office of mailing.

Sample: SPOKANE, WA 992  
3C LTRS - 5-DIGIT PKGS  
BOSTON, MA 021

A transmittal letter making these changes in the pages of the Domestic Mail Manual will be published and will be transmitted to subscribers automatically. Notice of these changes will be published in the Federal Register as provided in 39 CFR 111.3.

(39 U.S.C. 401, 403, 404)

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 81-23814 Filed 8-13-81; 8:45 am]

BILLING CODE 7710-12-M

#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 52

[A-4-FRL 18786]

Approval and Promulgation of Implementation Plans; Georgia: Bubble Action for the ITT Rayonier, Inc., in Jesup, Ga.

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: Georgia has submitted a State Implementation Plan (SIP) revision affecting the allowable particulate emission rates from the No. 6 Recovery Boiler, No. 3 Power Boiler and No. 5 Smelt Dissolving Tank at the ITT Rayonier, Inc. in Jesup, Georgia. This action is being treated within the EPA bubble policy concept. More stringent controls are being placed on the sources that have shorter stacks and less stringent controls are required on the sources which have taller stacks. This will have a beneficial impact on the air quality and EPA is today approving this SIP revision.

DATE: These actions are effective September 14, 1981.

ADDRESSES: Copies of the materials submitted by the State may be



examined during normal business hours at the following locations:

Public Information Reference Unit,  
Library Systems Branch,  
Environmental Protection Agency, 401  
M Street SW., Washington, D.C. 20460  
Library, EPA, Region IV, 345 Courtland  
Street NE., Atlanta, Georgia 30365  
Office of the Federal Register, Room  
8401, 1100 L Street NW., Washington,  
D.C. 20408  
Georgia Department of Natural  
Resources, Environmental Protection  
Division, 270 Washington Street SW.,  
Atlanta, Georgia 30334

#### FOR FURTHER INFORMATION CONTACT:

Mr. Barry Gilbert, Air Programs Branch,  
EPA Region IV at the above address and  
telephone number 404/881-3286 or FTS  
257-3286.

#### SUPPLEMENTARY INFORMATION:

##### Background

On December 18, 1980, EPA received from the State of Georgia an SIP revision that pertains to the ITT Rayonier, Inc. in Jesup, Georgia. This revision was considered as a bubble application particulate controls on three sources.

ITT Rayonier has submitted an Equivalent Alternative Emission Reduction Option for particulate emissions from the No. 6 Recovery Boiler, No. 3 Power Boiler and No. 5 Smelt Dissolving Tank at its Jesup kraft pulp mill. Each of these emission points has been permitted according to Georgia's SIP applicable emission limitations. The No. 6 Recovery Boiler is presently under construction, and the power boiler and smelt tank are existing emission points which have recently demonstrated compliance by emission tests.

ITT's strategy is to increase the SIP allowable particulate emissions of 52.1 pounds per hour from No. 6 Recovery Boiler by 24.7 pounds per hour. To offset this allowable emission increase, ITT has agreed to accept particulate emission limitation reductions of 10.0 pounds per hour on No. 3 Power Boiler and 14.7 pounds per hour on No. 5 Smelt Dissolving Tank. The option will therefore result in no net allowable emission increases.

Ambient air quality monitoring data from a particulate sampler at the Wayne County High School in Jesup near the pulp mill indicated ambient particulate concentrations in 1979 of a maximum 68  $\mu\text{g}/\text{m}^3$  for the 24-hour average and a 34  $\mu\text{g}/\text{m}^3$  for the annual geometric mean. These concentrations are significantly below the National Ambient Air Quality Standards. Analysis of the emission rates and stack parameters before and

after implementing the bubble indicates there will be an improvement in ambient air quality.

On May 8, 1981 (46 FR 25322) EPA proposed approval of the bubble application and no comments were received.

#### Action

Based on the foregoing, EPA hereby approves Georgia's bubble revision affecting the allowable particulate emission rates from the No. 6 Recovery Boiler, No. 3 Power Boiler and No. 5 Smelt Dissolving Tank at the ITT Rayonier, Inc. in Jesup, Georgia.

Under Section 307(b)(1) of the Clean Air Act, judicial review of EPA's approval of this revision is available only by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit on or before September 14, 1981. Under Section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Pursuant to the provisions of 5 U.S.C. 605(b) I hereby certify that the attached rule will not have a significant economic impact on a substantial number of small entities. This action only approves state actions. It imposes no new requirements.

Under Executive Order 12291, EPA must judge whether a regulation is major and therefore subject to the requirement of a Regulatory Impact Analysis. This regulation is not major because it only approves State actions and imposes no new requirement on sources.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

**Note.**—Incorporation by reference of the State Implementation Plan for the State of Georgia was approved by the Director of the Federal Register on July 1, 1980.

(Sec. 110 of the Clean Air Act (42 U.S.C. 7410))

Dated: August 8, 1981.

Anne M. Gorsuch,  
Administrator.

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

#### Subpart L—Georgia

In § 52.570, paragraph (c) is amended by adding subparagraph (23) as follows:

##### § 52.570 Identification of plan.

(c) The plan revisions listed below were submitted on the dates specified.

(23) Permit revision affecting the allowable particulate emission rates from the No. 6 Recovery Boiler, No. 3 Power Boiler and No. 5 Smelt Dissolving Tank at the ITT Rayonier, Inc. in Jesup, Georgia submitted on December 18, 1980, by the Georgia Department of Natural Resources.

[FR Doc. 81-33788 Filed 8-13-81; 8:45 am]

BILLING CODE 6560-38-M

#### 40 CFR Part 52

[A5-FRL: 1980-2]

#### Approval and Promulgation of State Implementation Plans; Ohio

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rulemaking.

**SUMMARY:** On March 27, 1981, the State of Ohio submitted a revision to the total suspended particulates (TSP) portion of its State Implementation Plan (SIP). This revision is in the form of an alternative emissions reduction plan ("bubble") for the General Motors Central Foundry (GM) located in Defiance County, Ohio. The purpose of today's rulemaking is to announce the availability of the GM bubble and approval of it. This action will be effective on October 13, 1981, unless notice is received within thirty-days that someone wishes to submit adverse or critical comments.

**DATE:** This action is effective October 13, 1981.

**ADDRESSES:** Copies of this SIP revision are available for review at the following addresses:

Environmental Protection Agency,  
Region V, Air Programs Branch 230  
South Dearborn Street, Chicago,  
Illinois 60604

Environmental Protection Agency,  
Public Information Reference Unit, 401  
M Street, SW., Washington, D.C.  
20460

Ohio Environmental Protection Agency,  
Office of Air Pollution Control, 361  
East Broad Street Columbus, Ohio  
43215.

Written comments should be sent to:  
Gary Gulezian, Chief, Regulatory  
Analysis Section, Air Programs Branch  
EPA, Region V, 230 South Dearborn  
Street, Chicago, Illinois 60604.

**FOR FURTHER INFORMATION CONTACT:**  
Richard Clarizio, Regulatory Analysis  
Section, Air Programs Branch, EPA,  
Region V, 230 South Dearborn, Chicago,  
Illinois 60604.



**SUPPLEMENTARY INFORMATION:** On March 27, 1981, the State of Ohio submitted to EPA a revision to the TSP portion of its SIP. This revision is in the form of a bubble for eighteen sources located at General Motors' Central Foundry (GM). A public hearing on the GM bubble was conducted by the State in Defiance County on March 11, 1981. On March 26, 1981, the Director of Ohio EPA approved the bubble provisions. Subsequent to the Director's approval, the Governor of Ohio, on March 27, 1981, submitted the GM bubble to EPA as a revision to the Ohio TSP SIP.

The GM Central Foundry is located in Defiance County, Ohio, a designated attainment area for TSP (46 FR 36701). The GM bubble trades TSP emission reductions from eighteen sources located at the GM Central Foundry. The sources affected by this bubble are six Brown-Bovier electric induction furnaces, six Ajax electric induction furnaces and six material handling processes (i.e., mold shakeout, casting/mold separation equipment, sand reclamation and preparation devices, mold cooling and spudding operations and other material handling equipment).

TSP emissions from these sources are regulated by rule 11 of Chapter 3745-17 of the Ohio Administrative Code. For the six Ajax furnaces and the six Brown-Bovier furnaces rule 3745-17-11 specifies for each furnace, TSP emission limitations of 2.3 lbs/hr and 1.9 lbs/hr respectively. The total TSP emissions allowed by rule 3745-17-11 from the six Ajax and the six Brown-Bovier furnaces are 25.2 lbs/hr.

Present actual TSP emissions are 22.5 lbs/hr. from each of the Ajax furnaces and 16.9 lbs/hr. from each of the Brown-Bovier furnaces. Total actual TSP emissions from these furnaces are 236.4 lbs/hr.

Through the installation of additional air pollution control equipment the GM bubble will reduce TSP emissions from the Ajax and Brown-Bovier furnaces to 14.0 lbs/hr and 8.4 lbs/hr, respectively, for each furnace. Total TSP emissions for all of the furnaces would then be reduced to 134.4 lbs/hr.

To achieve the emission reduction goal of 25.2 lbs/hr specified in rule 3745-17-11, an additional TSP reduction of 109.2 lbs/hr needs to be achieved. The GM bubble will achieve this goal by reducing TSP emissions from the six material handling processes previously mentioned by a total of 144 lbs/hr beyond what is presently required for these sources. Under the GM bubble plan, the 144 lbs/hr reduction achieved as a result of implementing additional controls on the six material handling

processes will more than adequately offset the 109.2 lbs/hr reduction needed as a result of the new limits specified for the Ajax and Brown-Bovier furnaces. In fact, due to the implementation of the GM bubble, TSP emissions in the area will be reduced by an additional 34.8 lbs/hr beyond what is required by the SIP.

To ensure that the emission reductions for all eighteen sources are enforceable, Ohio EPA has submitted variances and modified operating permits for each of the eighteen sources subject to the GM bubble. One variance was issued by Ohio EPA for each of the Ajax and Brown-Bovier furnaces. The variances contain specific emission limitations and compliance dates for each of the furnaces. For the Ajax furnaces an emission limitation of 8.4 lbs/hr each is specified. For the Brown-Bovier furnaces, an emission limitation of 14.0 lbs/hr for each furnace is specified.

To ensure that the emission reductions from the six material handling operations are enforceable, Ohio EPA submitted modifications to existing operating permits for four of the sources and new permits to operate for the remaining two sources. The operating permits specify the exact emission limitation which each source must adhere.

As evidence of air quality improvement the State submitted a modeling analysis conducted for the area. This modeling analysis used the RAM rural model. This model was run with five years of meteorological data and examined the impact of the GM bubble on maintenance in the area of the annual and daily TSP NAAQS. The results of the model predicted that as a result of the GM bubble, there would be an improvement in the air quality for both the annual and daily time periods.

EPA has reviewed the GM bubble and has determined that it satisfies the following criteria specified in the December 11, 1979 Federal Register.

(1) *Eligibility*—In order to be eligible for a bubble, the source must be in an area which demonstrates attainment of the National Ambient Air Quality Standard (NAAQS) for the criteria pollutant which would be affected by the proposed bubble.

The GM bubble trades emissions of the criteria pollutant TSP. The GM Central Foundry is located in Defiance County, Ohio. This county is a designated attainment area for TSP (46 FR ). This satisfies the eligibility requirements.

(2) *Comparability*—The pollutants traded must be from the same criteria pollutant category. Furthermore, within

a category, pollutants that pose a significant health hazard cannot be traded against less harmful pollutants.

The GM bubble only proposes to trade emissions from the criteria pollutant category TSP. The particulates emitted from the eighteen sources affected by this bubble are comparable in their health effects. EPA believes that the GM bubble satisfies the comparability requirements.

(3) *Quantifiable and equal trades*—Emissions under the bubble must be quantifiable. Any increase in TSP emissions from a source or sources must be accompanied by a corresponding reduction in TSP emissions from another source or sources. The trades among these sources must, at a minimum, be equal.

In order to verify and quantify the emission reductions an emissions testing program was utilized. A reduction of 109.2 lbs/hr of TSP will be necessary if the emission limitations for the Ajax and Brown-Bovier furnaces are to be accepted. As stated previously, as a result of the implementation of the GM bubble, the six material handling processes will achieve a total emission reduction of 144 lbs/hr. This represents a trade in TSP emissions which is beyond the minimum requirement of equality. Therefore, it is acceptable. EPA believes that the GM bubble satisfies the quantifiable and equal trades requirements of the December 11, 1979 Federal Register.

(4) *Specificity and enforceability*—According to the December 11, 1979 Federal Register, emission limitations must be specified for each source which is subject to the bubble. These emission limitations and any control requirements which may be necessary, must be enforceable. Generally, the enforceability requirements are satisfied if the specific emission limitations and/or control requirements are specified in an adopted regulation, variance or permit.

The GM bubble contains operating permits, variances, and permit modifications for the eighteen sources subject to the bubble provisions. For each of these sources, specific emission limitations are established. Where additional time is needed to install additional control equipment, the permits or variances specify schedules for the installation and operation of the control equipment. EPA believes that this satisfies the specificity and enforceability requirements.

(5) *Continuity and compliance*—The continuity policy, as stated in the December 11, 1979 Federal Register, requires that any bubble proposed for a



SIP approved pursuant to Section 110 of the Clean Air Act must be submitted as an addition to and not as a replacement to the SIP. To satisfy the compliance requirements, the bubble: (a) may not provide the source with an opportunity to delay compliance with the existing SIP while awaiting EPA approval of the bubble, (b) may not be used to change the requirements specified in any existing court decrees.

EPA believes that the GM bubble satisfies the continuity requirement since it proposes emission limitations which are in addition to and not replacements for what is in the SIP. For the following reasons EPA also believes that the GM bubble satisfies the compliance requirements:

(a) The permits and variances issued for the sources covered under the GM bubble specifically state that the new emission limitations are not effective until EPA approves the GM bubble. As a consequence of this provision in the permits and variances the compliance requirements of the existing SIP are still applicable while EPA is rulemaking on the GM bubble.

(b) The bubble is not being used to change the requirements of any existing court decree.

EPA's review of the GM bubble indicates that it satisfies the criteria specified in the December 11, 1979 Federal Register. Therefore, EPA approves as part of the Ohio SIP the emission limitations interim and final compliance milestones control equipment requirements and testing procedures specified in the variances and permits submitted for the GM bubble. It should be noted, that any change in the permits on variances represents a revision to the SIP and as such must be submitted to EPA for review and approval.

The public should be advised that today's action will not be effective until (60 days from today's date.) If notice, however is received by (30 days from today's date) that someone wishes to submit adverse or critical comments, EPA will publish two subsequent Federal Register notices. One action will withdraw today's final approval. The other action will repropose approval of the GM bubble and will provide the public with an additional 30 days to submit substantive comments on the proposed approval. At the end of that 30 days public comment period EPA will evaluate all comments received and proceed with the appropriate final action.

Pursuant to the provisions of 5 U.S.C. Section 605(b), I hereby certify that this action will not have a significant economic impact on a substantial

number of small entities since it only affects one source and has been estimated to provide that source with an economic savings.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirements of a Regulatory Impact Analysis. Today's action does not constitute a major regulation since it merely approves a State action for one source. Furthermore, GM has stated that implementation of the provisions approved today will provide it with significant economic savings.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

Under Section 307(b)(1) of the Clean Air Act, judicial review of this action is available only by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit by October 13, 1981. Under Section 307(b)(2) of the Clean Air Act the requirements which are the subject of today's action may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

**Note.**—Incorporation by Reference of Michigan State Implementation Plan was approved by the Director of the Federal Register on July 1, 1980. (Section 110 of the Act as amended (42 U.S.C. 7410))

Dated: August 8, 1981.

Anne M. Gorsuch,  
Administrator.

Title 40 of the Code of Federal Regulations, Chapter I, Part 52 is amended as follows:

#### § 52.1870 [Amended]

1. Section 52.1870(c) is amended by adding subparagraph (31).

(c) \* \* \*

(31) On March 27, 1981 the State of Ohio submitted a revision to the total suspended particulate (TSP) portion of its State Implementation Plan (SIP). This revision is in the form of an alternative emissions reduction plan (bubble) for the General Motors (GM) Central Foundry located in Defiance County, Ohio. Incorporated into Ohio's SIP are the emission limitations, interim and final compliance milestones, control equipment requirements and testing procedures specified in the variances and permits submitted for the GM bubble.

[FR Doc. 81-23781 Filed 8-13-81; 8:45 am]

BILLING CODE 6560-38-M

#### 40 CFR Part 52

[A-10-FRL 1895]

#### Approval and Promulgation of Implementation Plan

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA today approves the maintenance of pay provision as a revision to the Washington SIP as submitted by the State Department of Ecology. On June 24, 1980, EPA published in the Federal Register (45 FR 42514) minimum requirements for primary nonferrous smelter orders (NSO) issued pursuant to Section 119 of the Clean Air Act (herein referred to as the Act). However, before any NSO can be issued, a provision regarding protection of the employee from loss of pay must be included in the Washington State Implementation Plan. The State submitted on April 28, 1979 a maintenance of pay provision to satisfy Section 110(a)(6) of the Act.

**DATE:** August 14, 1981.

**ADDRESSES:** The relevant material in support of this revision may be examined during normal business hours at the following locations:

Central Docket Section (10A-80-24),  
West Tower Lobby, Gallery I,  
Environmental Protection Agency, 401  
M Street, S.W., Washington, D.C.  
20460

Air Programs Branch, Environmental  
Protection Agency, Region 10, 1200  
Sixth Avenue, Seattle, Washington  
98101

State of Washington, Department of  
Ecology, 4224-Sixth Avenue, S.E.,  
Rowe Six, Bldg 4, Lacey, Washington  
98503

The Office of the Federal Register, 1100  
L Street, Room 8401, Washington, D.C.  
20460

#### FOR FURTHER INFORMATION CONTACT:

Richard F. White, Air Programs Branch,  
M/S 625, Environmental Protection  
Agency, 1200 Sixth Avenue, Seattle,  
Washington 98101, Telephone: (206) 442-  
1226, FTS: 399-1226

**SUPPLEMENTARY INFORMATION:** On April 29, 1981, EPA proposed in the Federal Register (46 FR 23955) to approve the maintenance of pay provision to the Washington SIP. EPA received no comments during the comment period. Therefore, EPA is approving the maintenance of pay provision to the Washington SIP. Readers are referred to the April 29 Federal Register for background information.



Under Section 307(b)(1) of the Clean Air Act, judicial review of this action is available *only* by filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of today. Under Section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may *not* be challenged later in civil or criminal proceeding brought by EPA to enforce these requirements.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of regulatory impact analysis. This regulation is not major because it only approves a State action and imposed no new regulatory requirements.

This regulation was submitted to the Office of Management of Budget (OMB) for review as required by Executive Order 12291.

Pursuant to the provisions of 5 U.S.C. 605(b) I certify that SIP approvals under Sections 110 and 172 of the Clean Air Act will not have a significant impact on a substantial number of small entities. This action constitutes a SIP approval under Sections 110 and 172 of the Clean Air Act.

Part 52 of Chapter I, Title 40, Code of Federal Regulations is amended as follows:

#### Subpart WW—Washington

1. In § 52.2470 paragraph (c)(29) is added as set forth below.

#### § 52.2470 Identification of plan.

(c) \* \* \*

(29) On April 28, 1979, the State Department of Ecology submitted WAC 173-400-160 as their maintenance of pay provision.

Note.—Incorporation by reference of the State Implementation Plan for the State of Washington was approved by the Director of the Federal Register on July 1, 1980. (Secs. 110 and 172, Clean Air Act (42 U.S.C. 7410 and 7502))

Dated: August 8, 1981.

Anne M. Gorsuch,  
Administrator.

[FR Doc. 81-23787 Filed 8-13-81; 8:45 am]  
BILLING CODE 6560-38-M

#### 40 CFR Part 52

[A-5-FRL 1899-5]

#### Approval and Promulgation of Implementation Plans: Wisconsin

AGENCY: Environmental Protection Agency.

#### ACTION: Final rule.

**SUMMARY:** On April 7, 1981 (46 FR 20690), the U.S. Environmental Protection Agency (EPA) proposed approval of and solicited public comment on a revision to the Wisconsin State Implementation Plan (SIP). The revision is in the form of a variance for Avis Rent-A-Car for its gasoline dispensing facility located in Milwaukee, Wisconsin. No public comments were received. This notice announces EPA's final approval of the revision to the Wisconsin SIP.

**EFFECTIVE DATE:** This final rulemaking becomes effective on September 14, 1981.

**ADDRESSES:** Copies of the SIP revision and supporting data are available for inspection during normal business hours at the following addresses:

United States Environmental Protection Agency, Air Programs Branch, Region V, 230 South Dearborn Street, Chicago, Illinois 60604

United States Environmental Protection Agency, Public Information Reference Unit, 401 M Street, S.W., Washington, D.C. 20460

Copies of the submission are also available at: Wisconsin Department of Natural Resources, Bureau of Air Management, 101 S. Webster Street, Madison, Wisconsin 53703.

**FOR FURTHER INFORMATION CONTACT:** Delores Sieja, Regulatory Analysis Section, United States Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6053.

**SUPPLEMENTARY INFORMATION:** On March 3, 1978 (43 FR 8962), and October 5, 1978 (43 FR 45993), pursuant to the requirements of Section 107 of the Clean Air Act (Act), EPA designated certain areas of the State of Wisconsin as not attaining the National Ambient Air Quality Standards (NAAQS) for ozone.

On January 28, 1979 (44 FR 8220), EPA revised the National Ambient Air Quality Standards (NAAQS) from 0.08 part per million (ppm) total photochemical oxidants for a maximum hourly average, to 0.12 ppm ozone for a maximum hourly average. Part D of the Clean Air Act requires the State to review its SIP for all areas that have not attained the NAAQS. These SIP revisions must demonstrate attainment of the primary NAAQS as expeditiously as practicable, but not later than December 31, 1982. Under certain conditions, the date may be extended to December 31, 1987 for ozone or carbon monoxide. An adequate SIP for ozone is one which provides for sufficient control of volatile organic compounds (VOC)

from stationary and mobile sources to provide for attainment of the standards.

For stationary sources, the plan must include, as a minimum, legally enforceable regulations reflecting the application of reasonable available control technology (RACT) for those stationary sources for which EPA has published a Control Techniques Guideline (CTG) by January 1978. In addition, by each subsequent January, RACT requirements for sources covered by the CTG's published by the preceding January must be adopted and submitted to EPA.

The Wisconsin Department of Natural Resources (WDNR) has the authority to grant source specific variances from the SIP under Section NR 154.02(3). On May 8, 1980, the WDNR received from Avis Rent-A-Car a request for a variance from Section NR 154.13(3)(c). Section NR 154.13(3)(c) requires that gasoline dispensing facilities install both a submerged fill and vapor balance system for storage tanks having capacities greater than 2,000 gallons.

Avis operates a gasoline dispensing facility for refueling its vehicles at 603 North 4th Street in Milwaukee, Wisconsin, an ozone nonattainment area. The gasoline storage system at the Avis installation consists of one 10,000 gallon tank and thus Avis is subject to the requirements of Section NR 154.13(3)(c). Avis claims, however, that compliance with this section is not technologically feasible as the gasoline storage tank is located under a multistory concrete parking garage.

WDNR's review considered the difficulty of installing controls, the air quality impact, and the requirements of NR 154.02(3)(a)3, which must be met before a variance may be granted, and has determined that Avis has met all the necessary criteria for the variance. Therefore, on September 18, 1980, the Wisconsin DNR granted Avis the requested variance for an exemption from the requirements of Section NR 154.13(3)(c). However, Wisconsin regulations state that a variance will not become effective until submitted to and approved by EPA.

On September 8, 1980, the State of Wisconsin formally submitted the Avis variance request to EPA as a revision to the ozone SIP. EPA has reviewed the variance and has determined that all procedural requirements were met. EPA's analysis of the technical support submitted on behalf of the proposed revision confirms that the operation of the Avis facility without the VOC control equipment specified in Section NR 154.13(3)(c) will not interfere with reasonable further progress towards



attainment and maintenance of the ozone NAAQS.

EPA agrees that it would be technologically infeasible to install both a submerged fill and vapor balance system at this facility. Therefore, on April 7, 1981, (46 FR 26690) EPA proposed to approve the revision. Interested parties were given until May 7, 1981, to comment on EPA's proposed approval. No comments were received. This notice announces EPA's final rulemaking action to approve this revision to the Wisconsin SIP.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that the attached rule will not have a significant economic impact on a substantial number of small entities. This action only approves State actions. It imposes no new requirements. In addition, this action only applies to one facility.

Under Section 307(b)(1) of the Clean Air Act, judicial review of this final action is available *only* by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of date of final rulemaking. Under Section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This regulation is not major because the only effect of approving the rule is to exempt one source (Avis Rent-A-Car) from the requirements of Section NR 154.13(3)(c) of Wisconsin Administrative Code. The exemption permits the source to continue the present operation of its facility.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

**Note.**—Incorporation by reference of the State Implementation Plan for the State of Wisconsin was approved by the Director of the Federal Register on July 1, 1980.

This final rulemaking is issued under the authority of section 110, 172 and 301(a) of the Clean Air Act.

Dated: August 8, 1981.

Anne M. Gorsuch,  
Administrator.

Part 40 of the Code of Federal Regulations, Chapter 1, Part 52, is amended as follows:

1. Section 52.2570(c) is amended by adding a new subparagraph (20) to read as follows:

#### § 52.2570 Identification of plan.

(c) \* \* \*

(20) On September 9, 1980, the State of Wisconsin submitted a variance to regulation NR 154.13(3)(c) for Avis Rent-A-Car.

[FR Doc. 81-23783 Filed 8-13-81; 8:45 am]

BILLING CODE 6560-38-M

#### 40 CFR Part 62

[A-4-FRL 1892-6]

#### North Carolina; Plan for Control of Sulfuric Acid Mist Emissions From Existing Sulfuric Acid Production Units

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** This notice approves North Carolina's plan for controlling sulfuric acid mist emissions from existing sulfuric acid production units. Portions of North Carolina's plan were submitted to EPA by the Director of the North Carolina Division of Environmental Management on October 27, 1978, and November 14, 1979, to comply with the requirements of Section 111(d) of the Clean Air Act. Section 111(d) requires States to develop plans to control emissions of designated pollutants from certain existing sources. This action will be effective October 13, 1981, unless notice is received on or before September 14, 1981, that someone wishes to submit adverse or critical comments.

**DATES:** This action is effective on October 13, 1981. To be considered, comments must be received by September 14, 1981.

**ADDRESSES:** Written comments should be addressed to Walter Bishop of EPA Region IV's Air Programs Branch (See EPA Region IV address below). Copies of the material submitted by North Carolina may be examined during normal business hours at the following locations:

Public Information Reference Unit,  
Library Systems Branch,  
Environmental Protection Agency, 401  
M Street, S.W., Washington, D.C.  
20460;

Office of the Federal Register, 1100 L  
Street, N.W., Room 8401, Washington,  
D.C. 20005;

Library, Environmental Protection  
Agency, Region IV, 345 Courtland  
Street N.E., Atlanta, Georgia 30365;  
N.C. Department of Natural Resources  
and Community Development,

Division of Environmental  
Management, P.O. Box 27687, Raleigh,  
North Carolina 27611.

**FOR FURTHER INFORMATION CONTACT:**  
Mr. Walter Bishop, EPA Region IV, Air  
Programs Branch, 345 Courtland St. N.E.,  
Atlanta, Georgia 30365, Phone 404/881-  
3043 or FTS 257-3043.

**SUPPLEMENTARY INFORMATION:** In accordance with Section 111 of the Clean Air Act (amended August 1977 Public Law No. 95-95), "Standards of Performance for New Stationary Sources," EPA has promulgated standards of performance for certain source categories. These standards include emission limits for criteria pollutants (those for which National Ambient Air Quality Standards have been published) and non-criteria pollutants, and apply to "new" sources (i.e., new, modified, or reconstructed sources) which commenced construction after the date on which EPA proposed standards for that particular source category.

Paragraph (d) of Section 111 requires States to develop plans for the control of emissions of the same non-criteria, or designated, pollutants from existing sources, which are regulated from new sources. "Existing" sources were defined as those which are present prior to the date on which EPA proposed new source performance standards for that particular source category. The requirements for such plans are set forth in Subpart B of 40 CFR Part 60 (November 17, 1975; 40 FR 53346).

On October 27, 1978 and November 14, 1979, North Carolina submitted a plan for controlling sulfuric acid mist emissions from sulfuric acid producers. The North Carolina statutes satisfy the EPA requirement that the State show that it has legal authority to carry out the plan. The submitted regulations specify emission standards, test methods, and compliance schedules. The plan provides for an emission limit of 0.5 pounds per ton (0.25 kg/metric ton). EPA has evaluated the North Carolina plan by comparing it with the requirements for State plans for designated facilities, as set forth in Subpart B of 40 CFR Part 60, Adoption and Submittal of State Plans for Designated Facilities, and with the EPA Guideline Document, Control of Sulfuric Acid Mist Emissions from Existing Production Units (EPA-450/2-77-019).

The North Carolina plan controls acid mist emissions from sulfuric acid producers that were in operation or were under construction before August 17, 1971. The acid production processes that are controlled are described in 40



CFR 60 Subpart H § 60.81(a). These sources must conduct continuous emission monitoring as per 40 CFR 60 Subpart H § 60.84. EPA approves the North Carolina plan which completely satisfied EPA requirements.

#### Action

EPA is today approving the North Carolina Plan for the control of sulfuric acid mist from existing sulfuric acid plants. This is being done without prior proposal because the changes are noncontroversial and have limited impact, and no comments are anticipated. The public should be advised that this plan will be effective October 13, 1981. However, if notice is received on or before September 14, 1981, that someone wishes to submit adverse or critical comments the approval action will be withdrawn and a subsequent notice will be published before the effective date. The subsequent notice will be published before the effective date. The subsequent notice will withdraw the final and begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Pursuant to the provisions of 5 U.S.C. 605(b) I hereby certify that the attached rule will not if promulgated have a significant economic impact on a substantial number of small entities. This action only approves state actions. It imposes no new requirements. In addition, this action only applies to a very small number of facilities.

Under Executive Order 12291, EPA must judge whether a regulation is major and therefore subject to the requirement of a Regulatory Impact Analysis. This regulation is not major because it merely ratifies State actions and imposes no new burden on sources.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

Under Section 307(b)(1) of the Clean Air Act, judicial review of EPA's approval of this action is available only by the filing of a petition for review in the United States Court of Appeals of appropriate circuit within 60 days of today. Under 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

**Note.**—Incorporation by reference of State plans for designated facilities and pollutants was approved by the Director of the Federal Register on July 1, 1980.

(Secs. 111 and 301(a) of the Clean Air Act, as amended (42 USC 7411 and 7601(a)))

Dated: August 8, 1981.

Anne M. Gorsuch,  
Administrator.

Part 62 of Chapter I, Title 40, Code of Federal Regulations is amended as follows:

Subpart II consisting of § 62.8350 is added as follows:

#### Subpart II—North Carolina

##### Sulfuric Acid Mist From Existing Sulfuric Acid Plants

##### § 62.8350 Identification of Plan.

- (a) Untitled.
- (b) The plan was officially submitted on October 27, 1978 and November 14, 1979.
- (c) The plan includes the following types of sulfuric acid plants.
  - (1) Acid plants operated by Texas Gulf Sulfur Co. in Beaufort County, Swift Agricultural Chemical Corporation in Brunswick County, USS Agri-Chemicals in Brunswick County, Wright Chemical Corporation in Columbus County and Northeast Chemical Company in New Hannover County.
  - (2) There are no oleum plants.
  - (3) There are no sulfur burning plants.
  - (4) There are no bound sulfur feedstock plants.

(Secs. 111 and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7411 and 7601(a)))  
(FR Doc. 81-23823 Filed 8-13-81; 8:45 am)

BILLING CODE 6560-38-M

#### 40 CFR Part 81

[A-5-FRL 1896-7]

##### Designation of Areas for Air Quality Planning Purposes Attainment Status Designations: Wisconsin

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is revising the attainment status for portions of La Crosse County, Wisconsin, from secondary nonattainment for total suspended particulates (TSP) to attainment, thus making all of La Crosse County attainment for TSP. This revision is based on a request from the State of Wisconsin to redesignate La Crosse County. Under the Clean Air Act, designations can be changed if sufficient data is available to warrant such change.

**EFFECTIVE DATE:** September 14, 1981.

**ADDRESSES:** Copies of the redesignation request, technical support documents, and the supporting air quality data are available for copying and inspection during normal business hours at the

Region V address and at the Public Information Reference Unit. A telephone call to Region V is recommended prior to your visit. A reasonable fee will be charged for copying. Public Information Reference Unit, Room 2922, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20480.

Copies of the supporting material are also available at: Wisconsin Department of Natural Resources, Bureau of Air Management, 1101 South Webster, Madison, Wisconsin 53707.

#### FOR FURTHER INFORMATION CONTACT:

Debra Marcantonio, Air Programs Branch, Region V, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago Illinois 60604, (312) 886-6088.

**SUPPLEMENTARY INFORMATION:** The Clean Air Act Amendments of 1977 added section 107(d), which directed each State to determine the National Ambient Air Quality Standards (NAAQS) attainment status of each air quality control region within the State, and to submit to the Administrator of EPA a list of nonattainment areas. The Administrator was required to promulgate the State lists, with any necessary modifications. The Administrator published these lists in the Federal Register on March 3, 1978 (43 FR 8962), and made necessary amendments in the Federal Register on October 5, 1978 (43 FR 45993).

According to section 107(d) of the Act, the designation for an area may be changed whenever sufficient data exists to warrant such a change. In the June 12, 1979 memo entitled "Section 107 Redesignation Criteria," Richard G. Rhoads, the Director of USEPA's Control Program Development Division, described EPA's requirements for approval of a change in an area's designation. A change from primary nonattainment to either secondary nonattainment or attainment in an area's nonattainment designation may be approved if there are eight consecutive quarters of recent ambient air quality data which show no violations of the appropriate NAAQS.

On March 3, 1978, EPA designated the following area of La Crosse County as nonattainment for the secondary TSP NAAQS: Sub-city area defined as follows: *North:* Corner of La Crosse Street and Second Avenue, East on La Crosse Street to 10th Street. *West:* Corner of Second Street and Main Street to La Crosse Street. *South:* Corner 10th Street and Main Street, West to Second Street. *East:* Corner of 10th Street, South to Main Street. The remainder of La



Crosse County was designated as attainment for TSP.

On July 15, 1980, the State of Wisconsin submitted a request to EPA in accordance with section 107(d)(5) of the Clean Air Act, to redesignate La Crosse County as attainment for TSP. In support of this request the State submitted 1977, 1978 and 1979 quality-assured monitoring data from the Sawyer Auditorium and the Cowley Hall monitoring sites. These sites which are the only two hi-vol samplers permanently stationed in La Crosse which have been collecting data for several years. The July 15, 1980 submittal contained 11 consecutive quarters of quality-assured monitoring data showing no violations (through the third quarter of 1979) for the La Crosse County nonattainment area. Although one exceedance of the short-term secondary standard was recorded in June 1978 at the Sawyer Auditorium monitor, no violations of the TSP standards have been recorded at either site since 1976.

Therefore, since eleven quarters of recent monitoring data are available which show no violations of the TSP NAAQS and since only eight quarters of data are necessary to change an area's nonattainment designation, EPA, on June 1, 1981 (46 FR 29291) proposed to change the attainment status for portions of La Crosse County, Wisconsin, from secondary nonattainment for TSP to attainment, thus making all of La Crosse County attainment for TSP. At the time of the proposed rule, a 30 day public comment period was provided. The public comment period ended on July 1, 1981. However, no comments were submitted regarding this action. Therefore, based on the monitoring data submitted by the State of Wisconsin, EPA today is taking final action to approve this revision.

Pursuant to Executive Order 12291 (Order), EPA must judge whether a regulation is "major" and therefore subject to the requirement of preparing a regulatory impact analysis. Today's action does not constitute a major regulation because it only changes an area's air quality designation, it does not impose any new regulatory requirements. This action was submitted to the Office of Management and Budget (OMB) for review as required by the Order.

Any comments from OMB to EPA and any EPA response to those comments are available for public inspection at the EPA Region V office listed above.

Pursuant to the provisions of 5 U.S.C. Section 605(b) I hereby certify that the attached rule will not, if promulgated,

have a significant impact on a substantial number of small entities. This action does not impose any new regulatory requirements but merely changes an area's air quality designation to attainment.

Under Section 307(b)(1) of the Clean Air Act judicial review of this action is available only by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of today. Under Section 307(b)(2) of the Clean Air Act, the requirements which are the subject to today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

(Section 107 of the Clean Air Act as amended)

Dated: August 8, 1981.

Anne M. Gorsuch,  
Administrator.

## PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PURPOSES

Title 40 of the Code of Federal Regulations, Chapter 1, Part 81 is amended as follows:

1. Section 81.350 is amended by revising La Crosse County in AQCR 128 for TSP to read as follows:

### § 81.350 Wisconsin.

#### Wisconsin—TSP

| Designated area    | Does not meet primary standards | Does not meet secondary standards | Cannot be classified | Better than national standards |
|--------------------|---------------------------------|-----------------------------------|----------------------|--------------------------------|
| AQCR 128:          |                                 |                                   |                      |                                |
| Barron County      |                                 |                                   |                      | X                              |
| Buffalo County     |                                 |                                   |                      | X                              |
| Chippewa County    |                                 |                                   |                      | X                              |
| Clark County       |                                 |                                   |                      | X                              |
| Crawford County    |                                 |                                   |                      | X                              |
| Dunn County        |                                 |                                   |                      | X                              |
| Eau Claire County  |                                 |                                   |                      | X                              |
| Jackson County     |                                 |                                   |                      | X                              |
| La Crosse County   |                                 |                                   |                      | X                              |
| Monroe County      |                                 |                                   |                      | X                              |
| Peppin County      |                                 |                                   |                      | X                              |
| Pierce County      |                                 |                                   |                      | X                              |
| Folk County        |                                 |                                   |                      | X                              |
| St. Croix County   |                                 |                                   |                      | X                              |
| Trempealeau County |                                 |                                   |                      | X                              |
| Vernon County      |                                 |                                   |                      | X                              |

[FR Doc. 81-23785 Filed 8-13-81; 8:45 am]

BILLING CODE 6560-38-M

## 40 CFR Parts 204, 205, and 211 [EN-FRL 19045]

**Noise Emission Standards for Portable Air Compressors, Medium and Heavy Trucks, Motorcycles and Motorcycle Replacement Exhaust Systems, Truck Mounted Solid Waste Compactors, and Noise Labeling Requirements for Hearing Protectors; Suspension of Enforcement of Recordkeeping and Reporting Requirements**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Suspension of enforcement of reporting and recordkeeping requirements.

**SUMMARY:** The Environmental Protection Agency (EPA) is immediately suspending enforcement of the reporting and recordkeeping requirements of the following regulations: Noise Emission Standards for Construction Equipment, General Provisions; Noise Emission

Standards for Motorcycles and Motorcycle Replacement Exhaust Systems; Noise Emission Standards for Truck Mounted Solid Waste Compactors; Product Noise Labeling, General Provisions; and Noise Labeling Requirements for Hearing Protectors.

The Agency is also proposing to revoke the reporting and recordkeeping requirements of these regulations. This notice of proposed rulemaking may be found in the "Proposed Rules" section of today's *Federal Register*. The Agency is immediately suspending enforcement of these reporting and recordkeeping requirements and will not enforce them prior to final action on that proposal.

**EFFECTIVE DATE:** August 14, 1981.

**FOR FURTHER INFORMATION CONTACT:** Timothy J. Dwyer, Acting Director,



Noise Enforcement Division, at (202) 426-4793.

**SUPPLEMENTARY INFORMATION:** On January 14, 1976, EPA promulgated a regulation (40 CFR 204.50, *et seq.*) which established noise emission standards for portable air compressors manufactured on or after January 1, 1978 (41 FR 2162). On April 13, 1976, EPA promulgated a regulation (40 CFR 205.50 *et seq.*) which established noise emission standards for medium and heavy trucks manufactured after January 1, 1978 (41 FR 15538). On December 31, 1980, EPA promulgated regulations (40 CFR 205.150 *et seq.* and 205.165 *et seq.*) establishing noise emission standards for motorcycles and motorcycle replacement exhaust systems manufactured on or after January 1, 1983 (45 FR 86694). On October 1, 1979, EPA promulgated a regulation (40 CFR 205.200 *et seq.*) establishing noise emission standards for truck mounted solid waste compactors manufactured on or after October 1, 1980 (44 FR 56526). On September 28, 1979, EPA promulgated a regulation (40 CFR 211.203 *et seq.*) establishing noise labeling requirements for hearing protectors manufactured on or after September 27, 1980 (44 FR 56130).

Each of these regulations imposes reporting and recordkeeping requirements on the manufacturers of the regulated products, including provisions that manufacturers of regulated products submit production verification reports or labeling verification reports, as appropriate, to the Director of the Noise Enforcement Division.

The President's proposed budget for Fiscal Year 1982, which was submitted to Congress on March 10, 1981, provides for no funding of the noise enforcement program in FY 1982 and indicates that the remainder of 1981 funds will be used to phase out the program by the end of the current fiscal year. Preliminary actions by Congress indicate that this portion of EPA's budget will be enacted as proposed. As the first step in this phase-out process, the Agency is proposing elsewhere in this **Federal Register** that the reporting and recordkeeping requirements of these regulations be revoked. The Agency is immediately suspending enforcement of these reporting and recordkeeping requirements, pending final action on the proposed revocation of the reporting and recordkeeping requirements. The Agency is requesting that manufacturers of regulated products immediately stop submitting product verification reports and labeling verification reports to the Director of the Noise Enforcement Division.

This action affects only the reporting and recordkeeping requirements of the regulations. All other provisions of the regulations promulgated under the Noise Control Act (42 U.S.C. 4901 *et seq.*) remain in effect. Regulated products remain subject, respectively, to the noise emission standards and labeling requirements of the regulations.

Furthermore, although EPA will no longer be requiring manufacturers' reports regarding compliance with these regulations, section 12 of the Noise Control Act (42 U.S.C. 4911), which provides for citizen suits to enforce noise control standards, remains in effect.

EPA has determined that this action is not a major rule under Executive Order 12291, and therefore does not require a Regulatory Impact Analysis. EPA does not anticipate any significant adverse effects on competition, employment, investment, productivity, or innovation in the regulated industries. This action will result in a significant reduction of the reporting and recordkeeping burdens for the regulated industries.

This action was submitted to the Office of Management and Budget (OMB) for review under Executive Order 12291.

Under the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, I hereby certify that this action will not have a significant economic impact on a substantial number of small entities. It affects only enforcement of the recordkeeping and reporting requirements of the regulations; other portions of the regulations are unaffected. Moreover, this action will ease recordkeeping and reporting burdens for the affected manufacturers, and will have no adverse economic effects.

This action is being taken under the authority of Section 10 and Section 13(a) of the Noise Control Act of 1972, as amended by the Quiet Communities Act of 1978, 42 U.S.C. 4912(a).

Dated: August 7, 1981.

Anne M. Gorsuch,  
Administrator.

For the reasons set out in the preamble, enforcement of the following reporting and recordkeeping requirements is hereby suspended:

#### **PART 204—NOISE EMISSION STANDARDS FOR CONSTRUCTION EQUIPMENT**

##### **Subpart A—General Provisions**

Sec.

204.5-7 Submission of exemption request.

##### **Subpart B—Portable Air Compressors**

Sec.

204.53 Maintenance of records:  
    Submittal of information.  
204.55-2(a)(2) (ii) and (iii)  
    Recordkeeping and notification when distributing compressors prior to production verification.  
204.55-2(f) Submittal of production verification testing schedules.  
204.55-4 Production verification report.  
204.55-10 Production verification based on data from previous model years.  
204.57-5 Reporting selective enforcement audit tests results.  
204.58-1 Submittal of written noise emission warranty.  
204.58-2 Submittal of list of possible acts of tampering.  
204.58-3 Submittal of instructions for maintenance, use and repair.

#### **PART 205—TRANSPORTATION EQUIPMENT NOISE EMISSION CONTROLS**

##### **Subpart A—General Provisions**

205.5-7 Submission of exemption request.

##### **Subpart B—Medium and Heavy Trucks**

205.53 Maintenance of records:  
    Submittal of information.

##### **Subpart D—Motorcycles**

205.157-2(a)(2) (ii) and (iii)  
    Recordkeeping and notification when distributing motorcycles prior to production verification.  
205.157-2(f) Submittal of production verification testing schedules.  
205.157-4 Production verification report.  
205.157-9 Production verification based on data from previous model year.  
205.158(e) Maintenance of records.  
205.160-5 Reporting selective enforcement audit test results.  
205.161 Maintenance of records:  
    Submittal of information.  
205.162-1 Submittal of warranty information.  
205.162-2 Submittal of list of possible acts of tampering.  
205.162-3 Submittal of instructions for maintenance, use and repair.  
205.162-4 Retention of durability records.



**Subpart E—Motorcycle Replacement Exhaust Systems****Sec.**

- 205.168-2(a) Recordkeeping and notification when distributing motorcycle replacement exhaust systems into commerce prior to production verification.
- 205.168-2(g) Submittal of production verification testing schedules.
- 205.168-3 Production verification report.
- 205.168-10 Production verification based on data from previous model year.
- 205.171-7 Reporting selective enforcement audit test results.
- 205.172 Maintenance of records: submittal of information.
- 205.173-1 Submittal of warranty information.
- 205.173-5 Retention of durability records.

**Subpart F—Truck Mounted Solid Waste Compactors**

- 205.203 Maintenance of records: submittal of information.
- 205.205-2(a)(2) Recordkeeping and notification when distributing compactors into commerce prior to production verification.
- 205.205-2(f) Submittal of production verification testing schedules.
- 205.205-4 Production verification report.
- 205.205-9 Production verification based on data from previous model years.
- 205.207-5 Reporting selective enforcement audit test results.
- 205.208-2 Submittal of list of possible acts of tampering.
- 205.208-3 Submittal of instructions for maintenance, use and repair.

**PART 211—PRODUCT NOISE LABELING****Subpart A—General Provisions**

- 211.110-5 Submission of exemption request.

**Subpart B—Hearing Protective Devices**

- 211.209(a) Maintenance of records: submittal of information.
- 211.209(b) Submittal of labeling verification test schedules.
- 211.210-2(a)(2) Requests for extension of time.
- 211.210-3 Submittal of label verification reports.

**211.212-5 Submittal of compliance audit test reports.**

[FR Doc. 81-23610 Filed 8-13-81; 8:45 am]

**BILLING CODE 6550-33-M****DEPARTMENT OF HEALTH AND HUMAN SERVICES****Health Care Financing Administration****42 CFR Part 405****Conditions of Participation for Hospitals; Conditions for Coverage of Services of Independent Laboratories; Immunohematological Testing, Transfusion Services and Bloodbanking****AGENCY:** Health Care Financing Administration (HCFA), HHS.**ACTION:** Final Rule.

**SUMMARY:** This regulation will provide uniformity in the requirements for immunohematological testing, transfusion services and bloodbanking for facilities participating in the Medicare program by adopting by cross-reference the Food and Drug Administration's (FDA) regulations in 21 CFR Parts 606, 610 and 640. The regulations are being adopted to implement a Memorandum of Understanding (MOU) between the Health Care Financing Administration (HCFA) and the FDA which has been signed by the Secretary on January 21, 1980 and was published in the Federal Register on March 25, 1980 (45 FR 19136). This will result in a consolidation of the survey activities in approximately 3,800 facilities now being surveyed by both HCFA and FDA. These facilities consist of hospitals and independent laboratories certified for participation in the Medicare program whose transfusion services are also subject to registration and inspection by the FDA. This regulation will result in the reduction of duplication and result in savings to the Department.

**EFFECTIVE DATE:** This regulation is effective on September 14, 1981.**FOR FURTHER INFORMATION, CONTACT:** Mr. Royal A. Crystal, (301) 594-7910.**SUPPLEMENTARY INFORMATION:****Background**

Since 1966, hospitals and independent laboratories participating in Medicare (Title XVIII of the Social Security Act) have been surveyed by the Department of Health and Human Services (DHHS) (and its predecessor) for compliance with health and safety standards. As part of the compliance process, each hospital or independent laboratory is

surveyed by a State agency under an agreement with HCFA to determine that the hospital (including its blood bank or transfusion service) or the independent laboratory meets Federal standards located at 42 CFR 405.1028 or 405.1310 et seq., respectively. However, hospitals are approved if they are surveyed and accredited by the Joint Commission on the Accreditation of Hospitals (JCAH) or the American Osteopathic Association (AOA), and this approval extends to their laboratory facilities. Concurrently, FDA has conducted inspections of blood banks and transfusion service facilities engaged in the collection and processing of blood and blood components under the provisions of the Food, Drug and Cosmetics Act (since 1973) and facilities engaged in interstate shipment of such blood components under the biologic provisions of the Public Health Service Act (since 1946).

With few exceptions, non-Federal hospitals and independent laboratories which are surveyed under Medicare are also inspected by FDA. Early in 1979, HCFA and FDA agreed to a MOU to coordinate Federally required inspections of hospital blood banks and transfusion services, in order to minimize duplication of effort and to reduce the burden on affected facilities. HCFA is adopting by cross-reference the FDA's regulations in 21 CFR Parts 606, 610, and 640. The MOU and implementing regulations will enable FDA to withdraw from the inspection of approximately 3,800 transfusion services which are already surveyed by the Medicare program, and still assure the health and safety of the patients. HCFA will retain portions of its current standards to clarify that the standards to be adopted will apply to services furnished to the patient, as well as to the blood products.

The only areas in which HCFA will expand the scope of its survey activities are in facilities which perform procedures related to the emergency or therapeutic collection and processing (including labeling) of blood and blood components for transfusion purposes in facilities which do not routinely collect blood and which are not registered as blood establishments with FDA. Only in these facilities will HCFA have to increase, to some extent, the time and scope of its inspection for blood processing and labeling requirements to relieve these facilities from a duplicative FDA survey. These actions will reduce the burden on facilities and will not increase the number of surveys conducted for the Medicare program.

The standards of the JCAH and AOA have been reviewed by HCFA and FDA



and have been found to be equivalent to those being adopted by HCFA. This includes the fact that JCAH accreditation standards include a presumption that a laboratory accredited by the College of American Pathologists meets those JCAH standards. Thus, a CAP-accredited laboratory in a JCAH-accredited hospital which is participating in the Medicare program is ordinarily surveyed neither by HCFA nor the JCAH, since both in effect rely on the survey by CAP. Therefore, the State agencies will not have to routinely inspect facilities accredited by JCAH or AOA for compliance with the requirements being adopted and they will not have to increase their survey workload.

Since the facilities affected by this regulation are already subject to the FDA requirements, adoption of these requirements by HCFA for the Medicare program will not have an impact on the operation of these facilities. Therefore, we need not provide advance notice for implementation.

#### Waiver of Notice of Proposed Rule Making

The regulations do not contain requirements that are not already covered by the existing FDA or HCFA regulations and facilities will not be subjected to any new or additional requirements under these regulations. The net results will be to reduce the number of surveys without addition of any new regulatory requirements.

The revisions to HCFA's regulations will conform its requirements for the survey of blood banks and transfusion services to those of FDA. This will continue to ensure patient health and safety, eliminate differences in applicable HCFA and FDA requirements, and reduce the number of surveys and the cost of survey activities to the Department.

The amendments are needed to facilitate proper program administration. A recodification and simplification effort to be completed in coordination with PHS early in 1982 (Cf 8/11/81) will consider other issues which require more time for development than those presented in this proposal; e.g., revision of the laboratory personnel standards, quality control and proficiency testing requirements. The amendments have already been extensively discussed with the groups affected by the changes, including the Joint Commission on the Accreditation of Hospitals, American Osteopathic Association, College of American Pathologists, American Association of Blood Banks, American Blood Resources Association, and the

American Hospital Association. The changes have been widely publicized in trade journals, newsletters, and at professional and national accreditation association meetings. In addition, FDA has notified all of the registered facilities covered under the agreement of the change as part of their registration renewal process. No adverse comments have been received from any of these sources.

The Department's intent to consider this change was approved by the Secretary and a notice to that effect was published in the Federal Register (45 FR 19316, March 25, 1980). Until HCFA's regulations are amended to conform to FDA's, the deficiency citations issued by HCFA are only by reference to FDA regulations, which by themselves are not sufficient authority for the Medicare program to require corrective action. FDA retains jurisdiction and can inspect the facility when necessary. However, FDA is in the process of deregistering these facilities and removing them from its inspection program. In order to eliminate potential problems with enforcement and to expedite implementation of the agreement, the regulation should be published as soon as possible. This will serve to protect the public interest by ensuring continued enforcement of necessary health and safety requirements with a considerable saving to the Department and regulated facilities in survey costs. In view of these reasons, HCFA finds good cause to waive the Notice of Proposed Rule Making.

#### Regulatory Flexibility Act and Executive Order 12291

The Secretary certifies, pursuant to Section 605(b) of the Regulatory Flexibility Act (Pub. L. 96-354) that the regulation proposed in this final rule will not have a significant economic impact on a substantial number of small entities. The reason for the Secretary's negative certification is that the proposed regulation imposes no new or additional requirements or surveys on the affected facilities. Actually, as a result of the regulation, the facilities will be subject to fewer inspections. Also, the number of forms to be completed and agencies to which the facilities must report will be reduced. The laboratories are already being surveyed by HCFA and the regulations and survey forms adopted from FDA will not impose any survey burden or have any economic impact on these facilities.

The Secretary has determined, in accordance with Executive Order 12291, that the final rule does not constitute a "major rule" because it will not have an annual effect on the economy of \$100

million or more; result in a major increase in costs or prices for consumers, any industries, any governmental agencies or any geographic regions; or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or import markets.

42 CFR Part 405 is amended as set forth below:

1. Section 405.1028(j)(6) is revoked and reserved

#### § 405.1028 Condition of participation—Laboratories.

(j) *Standard; blood and blood products.*

(6) [Reserved]

2. Section 405.1317(b) is amended by adding paragraph (2)(iv) to read as follows:

#### § 405.1317 Condition—quality control.

(b) *Standard; quality control system—methodologies.* Provision is made for an acceptable quality control program covering all types of analysis performed by the laboratory for verification and assessment of accuracy, measurement of precision, and detection of error. The factors explaining the standard are as follows:

(2) *Serology.*

(iv) All facilities performing transfusion of blood and blood products or serving as referral laboratories for these facilities must meet the syphilis serology testing requirements of 21 CFR 640.5(a).

3. 405.1317(b) is amended by revising (4)(i), (ii), and (iii), reserving paragraph (b)(9) and adding paragraph (b)(10) to read as follows:

#### § 405.1317 Condition—quality control.

(b) *Standard; quality control system—methodologies.*

(4) *Immunohematology.*

(i) ABO and Rho(D) grouping, antibody detection and identification, and compatibility testing must be performed according to the requirements of 21 CFR Part 606 (with the exception of 21 CFR 606.20a, Personnel) and 21 CFR 640 et seq.



(A) ABO grouping shall be performed by testing unknown red cells with anti-A and anti-B grouping serums. For confirmation of ABO grouping, the unknown serum shall be tested with known group A1 and B red cells.

(B) The Rh<sub>0</sub> (D) group shall be determined by testing unknown red cells with anti-D (anti-Rh<sub>0</sub>) blood grouping serum. All Rh<sub>0</sub> negative donor and patient cells shall be tested for the Rh<sub>0</sub> variant (D\*).

(C) A control system of patient's cells suspended in the patient's own serum or in albumin shall be employed when the test is performed in a high protein medium.

(ii) Blood and blood product collection, and processing and distribution shall conform to the requirements of 21 CFR Part 640, subparts A, B, C, D, and F, except that the testing laboratory must be a Medicare approved facility.

(iii) Dating periods for blood and blood products must conform to 21 CFR 610.53.

(9) [Reserved.]

(10) Hepatitis testing requirements of 21 CFR 610.40 must be met for all facilities performing transfusion of blood or blood products or serving as referral laboratories for these facilities. Laboratories may offer the test within the specialty of clinical chemistry or within the specialty of serology.

(Sections 1102, 1801(e)(9), 1801(s)(11) and 1871 of the Social Security Act; 42 U.S.C. 1302, 1395x(e)(9), 1395x(s)(11), and 1395hh) (Catalog of Federal Domestic Assistance Program No. 13.714 Medical Assistance Program; 13.773 Medicare-Hospital Insurance; 13.774 Medicare-Supplementary Medical Insurance)

Dated: April 6, 1981.

Carolyn K. Davis,  
Administrator, Health Care Financing  
Administration.

Approved: July 27, 1981.

Richard S. Schweiker,  
Secretary.

[FR Doc. 81-23644 Filed 8-13-81; 8:45 am]

BILLING CODE 4110-35-M

## 42 CFR Part 405

### Medicare Program; Determination of Payment Amount for Services Furnished by Independent Rural Health Clinics

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule with a request for additional comments.

**SUMMARY:** This final rule amends the regulations concerning payment for services furnished by independent rural health clinics under the Medicare program. Specifically, we are amending the regulations at 42 CFR 405.2425(b) to clarify how interim Medicare reimbursement to the clinic is calculated when services are furnished to a beneficiary who has not met the Medicare Part B deductible requirements. The amendment is needed to correct an inaccurate statement in the current regulations of the rules governing payment in these situations.

We are also amending the regulations at 42 CFR 405.2427(b) to clarify our procedures to be used by the Medicare carriers in calculating the total reimbursement amount due the clinic at the time of final cost settlement.

**EFFECTIVE DATE:** March 1, 1978.

**Comment date:** Although we are publishing this as a final rule for reasons stated in the Supplementary Information, we will consider any comments received by October 13, 1981.

**ADDRESSES:** Address comments in writing to: Administrator, Health Care Financing Administration, Department of Health and Human Services, P.O. Box 17073, Baltimore, Maryland 21235.

If you prefer, you may deliver your comments to Room 309G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, D.C., or to Room 789 East High Rise Building, 6401 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to BPP-110-FC. Agencies and organizations are requested to submit comments in duplicate.

Comments will be available for public inspection, beginning approximately two weeks after publication, in Room 309G of the Department's offices at 200 Independence Avenue SW., Washington, D.C., on Monday through Friday of each week from 8:30 am to 5:00 pm (202-245-7890).

**FOR FURTHER INFORMATION, CONTACT:** Bernadette Schumaker, 301-597-1048.

**SUPPLEMENTARY INFORMATION:** Independent rural health clinics (RHCs) provide a variety of medical and health care services to Medicare beneficiaries. (Independent clinics are clinics that are not a part of a hospital, skilled nursing facility, or home health agency participating in Medicare as a provider of services.) Under current Medicare regulations (42 CFR 405.2425), these RHCs are reimbursed for covered services furnished to beneficiaries by an all-inclusive rate per visit. We calculate this rate at the beginning of a clinic's cost reporting period. We determine the

rate by dividing the estimated cost of the RHC services by the anticipated number of visits with physicians, physician assistants or nurse practitioners that the clinic will furnish to its patients during the cost reporting period. This interim rate is paid throughout the reporting period, subject to the Medicare deductible and coinsurance requirements (see 42 CFR 405.245), for each covered visit furnished to a Medicare beneficiary. At the end of each reporting period, the RHC submits to the Medicare carrier a report of its actual costs incurred during the year and of the actual number of visits by beneficiaries and other patients. The carrier then determines the final reimbursement amount due the clinic in accordance with the procedures specified in 42 CFR 405.2427, and compares this amount with the interim payments made to the clinic during the reporting period. The carrier then reconciles any underpayments or overpayments.

The amendment to 42 CFR 405.2425 concerns the rules governing the amount payable to the RHC for services furnished to a beneficiary when his Part B deductible has not been met. Under the deductible requirements, beneficiaries are responsible for the first \$60 of expenses incurred for covered services in a calendar year.

A conflict exists because there is an inconsistency between the regulations at 42 CFR 405.2425(b)(2) and the instructions we issued to implement these regulations. The regulations state that, if a beneficiary's deductible has not been met, payment to the clinic will be made only if the clinic's reasonable customary charges for the services furnished to the beneficiary exceed the amount necessary to satisfy the beneficiary's deductible. If this condition is met, the amount necessary to satisfy the deductible will be subtracted from the all-inclusive rate, and 80 percent of the remainder, if any, will be paid to the clinic. However, if the amount necessary to satisfy the deductible was equal to or greater than the clinic's reasonable and customary charge, the current regulation would preclude any payment to the clinic.

Our bill payment instructions to the carriers (Part A Intermediary Manual, Part 3, § 3840.13), issued in March 1978, stated that, if the beneficiary's deductible had not been met, and the clinic's reasonable customary charges for the services (or the portion thereof applied to the deductible) are less than the all-inclusive rate, the amount applied toward the deductible would be subtracted from the all-inclusive rate,



and 80 percent of the difference, if any, would be paid to the clinic. (If the customary charges—or the portion thereof applied to the deductible—were more than or equal to the all-inclusive rate, no payment is made.)

**Example:** A RHC's charge for services furnished to a beneficiary (upon which beneficiary deductible and coinsurance liability is calculated) is \$15. The all-inclusive rate per visit for the RHC, which is the basis for payment to the clinic, has been determined to be \$20. The beneficiary has not met any portion of the deductible.

Therefore, all of the \$15 charge, which is paid by the beneficiary, is applied toward the deductible.

Under the regulations, no payment would be made to the clinic. However, the instructions would allow the clinic to be paid \$4. (All of the RHC's charge is applied toward the deductible; the difference between the all-inclusive rate and the RHC charge is \$5; 80 percent of that difference is \$4).

The instructions were based on Medicare payment procedures in effect for similar program areas, e.g., hospital outpatient departments. We became aware of the inconsistency between the regulations and instructions when carriers began to make final settlements with the clinics in accordance with the regulations. In many cases, the carriers found that a payment made under the instructions resulted in an overpayment under the regulations, which required recoupment action by the Medicare program.

It was not our intention at the time the RHC regulations were issued to establish a payment system for RHCs that differs from payment systems in other settings. The instructions we issued are consistent with program intent and with payment procedures for these similar program areas. We are, therefore, amending the regulations to reflect the intended procedures.

We are also amending 42 CFR 405.2427(b)(1) of the regulations to clarify the procedures to be used by the carriers in calculating the total reimbursement amount due the clinic at final settlement. The amendment merely clarifies our existing policy and procedures, and does not present any new requirements. It specifies that the amount due is calculated on the basis of the average cost per visit multiplied by the number of beneficiary visits, less the incurred deductibles. This clarification is necessary to show the relationship between the amount paid to the clinic on an interim basis and the total reimbursement due at final cost settlement.

The Medicare and Medicaid Amendments of 1980, enacted on December 5, 1980, have made changes in the way rural health clinics are to be

paid. (See Pub. L. 96-499, Section 942). The statute provides that clinics will be paid the cost of rural health clinic services to Medicare beneficiaries, less deductibles and the charges made to patients, rather than 80 percent of these costs less deductibles as is now the case. Further changes in rural health clinic regulations to implement these statutory changes are forthcoming.

#### Effective Date

We are making these amendments to the regulations effective retroactive to March 1, 1978, the effective date of the RHC reimbursement regulations. We chose this effective date because the regulations at 42 CFR 405.2425 have not been fully implemented; a number of carriers have followed the payment method provided in the instructions. We would, therefore, have to reprocess a substantial number of RHC claims if the effective date were prospective. To do so would involve a large administrative expense to the program while no benefit would accrue for beneficiaries or RHCs.

Also, because of the inconsistency in the regulatory language and the payment procedures in the instructions, an apparent overpayment has been created for many clinics. Establishing a retroactive effective date will eliminate this. The amendment, therefore, relieves a restriction on payment to RHCs and good cause also exists for establishing a retroactive effective date for the reasons indicated above.

Further, the revisions to 42 CFR 405.2427 merely expand on and clarify existing policies and procedures that have been in effect since the original effective date of the RHC regulations. They clarify 42 CFR 405.2427 in light of the changes to 42 CFR 405.2425 and therefore, the same retroactive effective date is appropriate for this amendment.

#### Waiver of Proposed Rulemaking

We are issuing this amendment as a final rule with a comment period, rather than as a Notice of Proposed Rulemaking, because we believe that the amendment is technical in nature and does not alter existing procedures. However, we will consider any comments received on this final rule and make any necessary changes based on those comments.

The change to 42 CFR 405.2425 will not in any way affect the calculation of beneficiary liability. Rather, the change will correct an error in the present regulations regarding the manner in which interim program payment is determined for RHCs. Further, waiver will permit prompt settlement of cost reports that have been suspended pending resolution of this issue.

Settlement on these cost reports will avoid cash flow problems for these clinics, while further delay would be contrary to the public interest.

We will be issuing instructions to the carriers that will detail correct payment and settlement procedures, as well as provide guidance in refunding overpayment amounts already collected from clinics.

#### "Hold Harmless" Provision

As indicated above, we believe the amendment to 42 CFR 405.2425 will correct an overpayment situation unintentionally created for some clinics and will therefore be advantageous to them. However, because we cannot know with absolute certainty what precise effect the change will have on any particular clinic, we intend to include a "hold harmless" provision in the implementing instructions. We will advise the carriers that, if they believe that an RHC may be disadvantaged under the new procedures, they should calculate the RHC final cost settlement using both the old and new methodologies and give the RHC the benefit of the higher amount determined. However, any RHC that believes that it has been disadvantaged by this change or has not received the benefit of a higher settlement amount should contact its carrier to determine if its final cost settlement has been or will be recalculated.

#### Impact on Small Businesses

Pub. L. 96-354, the Regulatory Flexibility Act, September 19, 1980, requires Federal agencies to prepare a regulatory flexibility analysis if regulations and requirements would impact on small businesses or entities. The law applies if the regulations or requirements have a significant economic impact on (1) "small businesses" as defined under section 3 of the Small Business Act; (2) not-for-profit enterprises independently owned and operated and not dominant in their fields; and (3) government jurisdictions serving less than 50,000 persons. We have determined that this regulation would principally affect only Medicare fiscal intermediaries and the manner in which they calculate reimbursement due RHCs. Intermediaries are not small entities or businesses within the meaning of the statute, and thus no analysis is required.

#### Regulatory Impact Analysis

The Secretary has determined, in accordance with Executive Order 12291, that this final rule does not constitute a "major rule" because it will not have an



annual effect on the economy of \$100 million or more; result in a major increase in costs or prices for consumers, any industries, any governmental agencies or any geographic regions; or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

42 CFR Part 405 is amended as follows:

1. 42 CFR 405.2425 is amended by revising paragraph (b)(2)(ii) and adding a new paragraph (b)(2)(iii) to read as follows:

**§ 405.2425 Payment for rural health clinic services.**

**(b) Payment to independent clinics.**

(2) The interim amount payable by the carrier for a visit will be determined as follows:

(ii) If the deductible has not been fully incurred by the beneficiary before the visit, and the amount of the clinic's reasonable customary charges for the services that is applied to the deductible is less than the all-inclusive rate, the amount applied to the deductible will be subtracted from the all-inclusive rate and 80 percent of the remainder, if any, will be paid to the clinic.

(iii) If the deductible has not been fully incurred by the beneficiary before the visit, and the amount of the clinic's reasonable customary charges for the services that is applied to the deductible is equal to or exceeds the all-inclusive rate, no payment will be made to the clinic.

2. 42 CFR 405.2427 is amended by revising paragraph (b)(1) to read as follows:

**§ 405.2427 Annual reconciliation.**

**(b) Calculation of reconciliation.**

(1) The total reimbursement amount due the clinic for covered services furnished to Medicare beneficiaries will be based on the report specified in § 405.2429(c)(2) and will be calculated by the carrier as follows:

(i) The average cost per visit will be

calculated by dividing the total allowable cost incurred for the reporting period by total visits for rural health clinic services furnished during the period. The average cost per visit will be subject to tests of reasonableness which may be established in accordance with this subpart.

(ii) The total cost of rural health clinic services furnished to Medicare beneficiaries will be calculated by multiplying the average cost per visit by the number of visits for covered rural health clinic services by beneficiaries.

(iii) The total reimbursement due the clinic will be 80 percent of the amount calculated by subtracting the amount of deductible incurred by beneficiaries, that is attributable to rural health clinic services, from the cost of these services.

(Sections 1102, 1833, 1861(aa), and 1871 of the Social Security Act; 42 U.S.C. 1302, 1395, 1395x(aa) and 1395hh)

(Catalog of Federal Domestic Assistance Program No. 13.774—Supplementary Medical Insurance Program)

Dated: May 14, 1981.

Carolyn K. Davis,

Administrator, Health Care Financing Administration.

Approved: July 27, 1981.

Richard S. Schweiker,

Secretary.

[FR Doc. 81-23786 Filed 8-13-81; 8:45 am]

BILLING CODE 4110-35-M

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### 44 CFR Part 67

#### National Flood Insurance Program; Final Flood Elevation Determinations; Alabama, et al.

**AGENCY:** Federal Insurance Administration, FEMA.

**ACTION:** Final rule.

**SUMMARY:** Final base (100-year) flood elevations are listed below for selected locations in the nation.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required either to adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

**EFFECTIVE DATE:** The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the community.

**ADDRESSES:** See table below.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert G. Chappell, National Flood Insurance Program, (202) 755-5585, Federal Emergency Management Agency, Washington, D.C. 20472.

**SUPPLEMENTARY INFORMATION:** The Federal Insurance Administrator gives notice of the final determination of flood elevation for each community listed.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 44 CFR Part 67). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 44 CFR Part 60.

Pursuant to the provisions of 5 USC 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the (final) flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the flood plain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts flood plain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with federal standards, the elevations prescribe how high to build in the flood plain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

The final base (100-year) flood elevations for selected locations are:



## Final Base (100-Year) Flood Elevations

| State                                                                                                | City/town/county                                              | Source of flooding                                                                        | Location                                                                                                                       | # Depth in feet above ground. * Elevation in feet (NGVD) |       |
|------------------------------------------------------------------------------------------------------|---------------------------------------------------------------|-------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------|-------|
| Alabama                                                                                              | City of Florence, Lauderdale Co. (FEMA-6027)                  | Cox Creek                                                                                 | Just upstream of Helton Drive                                                                                                  | * 517                                                    |       |
|                                                                                                      |                                                               |                                                                                           | Approximately 200 feet downstream of confluence of Haddon and Wilson Creeks                                                    | * 548                                                    |       |
|                                                                                                      |                                                               | Haddon Creek                                                                              | Just downstream of County Road 16                                                                                              | * 555                                                    |       |
|                                                                                                      |                                                               | Wilson Creek                                                                              | Just downstream of Kings Bridge Road                                                                                           | * 553                                                    |       |
|                                                                                                      |                                                               | Sweetwater Creek                                                                          | Just downstream Union Avenue                                                                                                   | * 434                                                    |       |
|                                                                                                      |                                                               |                                                                                           | Just upstream of Colorado Avenue                                                                                               | * 466                                                    |       |
|                                                                                                      |                                                               |                                                                                           | Just downstream of Broadway Street                                                                                             | * 538                                                    |       |
|                                                                                                      |                                                               |                                                                                           | Just downstream of Lee HWY (U.S. HWY 72)                                                                                       | * 576                                                    |       |
| Maps available for inspection at City Hall, 110 West College Street, Florence, Alabama 35630.        |                                                               |                                                                                           |                                                                                                                                |                                                          |       |
| North Carolina                                                                                       | Unincorporated Areas of Nash County (FEMA-6048)               | Swift Creek                                                                               | Just upstream of Seaboard Coastline Railroad                                                                                   | * 92                                                     |       |
|                                                                                                      |                                                               |                                                                                           | Approximately 600 feet at upstream of U.S. Highway 301                                                                         | * 96                                                     |       |
|                                                                                                      |                                                               |                                                                                           |                                                                                                                                | Just upstream of North Carolina Route 48                 | * 116 |
|                                                                                                      |                                                               |                                                                                           |                                                                                                                                | Just downstream of North Carolina Route 1003             | * 131 |
|                                                                                                      |                                                               | Compass Creek                                                                             | Just downstream of North Carolina Route 1524                                                                                   | * 132                                                    |       |
|                                                                                                      |                                                               | Pig Basket Creek                                                                          | Just downstream of North Carolina Route 1003                                                                                   | * 128                                                    |       |
|                                                                                                      |                                                               | Stony Creek                                                                               | Just upstream of North Carolina 1544                                                                                           | * 118                                                    |       |
|                                                                                                      |                                                               |                                                                                           | Just upstream of North Carolina 1803                                                                                           | * 123                                                    |       |
|                                                                                                      |                                                               |                                                                                           | Just downstream of Nashville Urban Extraterritorial Boundary or approximately 500 feet downstream of North Carolina Route 1800 | * 131                                                    |       |
|                                                                                                      |                                                               | Maple Creek                                                                               | Just upstream of North Carolina 1803                                                                                           | * 167                                                    |       |
|                                                                                                      |                                                               | Sapony Creek                                                                              | Upstream North Carolina Route 1717                                                                                             | * 134                                                    |       |
|                                                                                                      |                                                               |                                                                                           | Just downstream of U.S. Highway 58                                                                                             | * 141                                                    |       |
|                                                                                                      |                                                               | Tar River                                                                                 | Just downstream of North Carolina 1544                                                                                         | * 112                                                    |       |
|                                                                                                      |                                                               |                                                                                           | Just upstream of North Carolina Route 58                                                                                       | * 135                                                    |       |
|                                                                                                      |                                                               |                                                                                           | Just downstream of North Carolina Route 1933                                                                                   | * 137                                                    |       |
|                                                                                                      |                                                               |                                                                                           | Just upstream of North Carolina Route 1001                                                                                     | * 146                                                    |       |
|                                                                                                      |                                                               |                                                                                           | Just upstream of North Carolina Route 581                                                                                      | * 155                                                    |       |
|                                                                                                      |                                                               |                                                                                           | Just upstream of U.S. Route 64                                                                                                 | * 164                                                    |       |
|                                                                                                      |                                                               | Turkey Creek                                                                              | Just downstream of North Carolina 1101                                                                                         | * 160                                                    |       |
|                                                                                                      |                                                               |                                                                                           | Just upstream of Southern Railway                                                                                              | * 166                                                    |       |
|                                                                                                      |                                                               | Grape Branch                                                                              | Approximately 700 feet at upstream of State Road 1717                                                                          | * 105                                                    |       |
|                                                                                                      |                                                               | Fishing Creek                                                                             | Just downstream of State Road 1222                                                                                             | * 105                                                    |       |
|                                                                                                      |                                                               |                                                                                           | Just upstream of Interstate Highway 95 Southbound                                                                              | * 115                                                    |       |
|                                                                                                      |                                                               |                                                                                           | Just upstream of State Road 1342                                                                                               | * 125                                                    |       |
|                                                                                                      |                                                               | Maps available for inspection at Nash County Courthouse, Nashville, North Carolina 27856. |                                                                                                                                |                                                          |       |
| North Carolina                                                                                       | City of Rocky Mount, Edgecombe and Nash Counties (FEMA- 6048) | Tar River                                                                                 | Just upstream of State Road 1243                                                                                               | * 74                                                     |       |
|                                                                                                      |                                                               |                                                                                           | Just downstream of U.S. Highway 301 (Business)                                                                                 | * 83                                                     |       |
|                                                                                                      |                                                               |                                                                                           |                                                                                                                                | Just downstream of State Road 1714 (Nashville Road)      | * 103 |
|                                                                                                      |                                                               |                                                                                           |                                                                                                                                | Just upstream of State Road 1251                         | * 90  |
|                                                                                                      |                                                               | Tar River Tributary                                                                       | Just upstream of U.S. Highway 301 By-Pass                                                                                      | * 88                                                     |       |
|                                                                                                      |                                                               | Horn Beam Branch                                                                          | Just downstream of State Road 1535                                                                                             | * 105                                                    |       |
|                                                                                                      |                                                               | Compass Creek                                                                             | Just upstream of North Carolina 97                                                                                             | * 80                                                     |       |
|                                                                                                      |                                                               |                                                                                           | Just upstream of State Road 1538                                                                                               | * 91                                                     |       |
|                                                                                                      |                                                               | Cowlick Creek                                                                             | Just upstream of U.S. Highway 64 (Raleigh Road)                                                                                | * 83                                                     |       |
|                                                                                                      |                                                               |                                                                                           | Just downstream of Courtland Avenue                                                                                            | * 97                                                     |       |
|                                                                                                      |                                                               | Parker Canal                                                                              | Just downstream of Grand Avenue                                                                                                | * 84                                                     |       |
|                                                                                                      |                                                               |                                                                                           | Just downstream of Atlantic Avenue                                                                                             | * 98                                                     |       |
|                                                                                                      |                                                               | Goose Branch                                                                              | Just upstream of Highway 43/48 (Benvenue Road)                                                                                 | * 86                                                     |       |
|                                                                                                      |                                                               |                                                                                           | Just downstream of Country Club Rd.                                                                                            | * 96                                                     |       |
|                                                                                                      |                                                               | Stony Creek                                                                               | Just downstream of U.S. Highway 301                                                                                            | * 96                                                     |       |
|                                                                                                      |                                                               |                                                                                           | Just upstream of U.S. Highway 64                                                                                               | * 114                                                    |       |
|                                                                                                      |                                                               | Maple Creek                                                                               | Just upstream of State Road 1713 (Old Mill Road)                                                                               | * 102                                                    |       |
|                                                                                                      |                                                               |                                                                                           | Just downstream of State Road 1544 (Halifax Road)                                                                              | * 116                                                    |       |
|                                                                                                      |                                                               | Grape Branch                                                                              | Approximately 100 feet upstream of State Road 1717 (West Mount Dr.)                                                            | * 105                                                    |       |
|                                                                                                      |                                                               | Little Cokey Swamp                                                                        | Just downstream of State Road 1002 (Old Wilson Road)                                                                           | * 101                                                    |       |
|                                                                                                      |                                                               | Little Cokey Swamp Tributary                                                              | Just upstream of Kinlaw Street                                                                                                 | * 122                                                    |       |
|                                                                                                      |                                                               |                                                                                           | Just downstream of State Road 1152 (Arlington St.)                                                                             | * 113                                                    |       |
|                                                                                                      |                                                               |                                                                                           | Just upstream of U.S. highway 301 Business                                                                                     | * 127                                                    |       |
| Maps available for inspection at City Hall, 131, N.E. Main Street, Rocky Mount, North Carolina 27801 |                                                               |                                                                                           |                                                                                                                                |                                                          |       |
| Pennsylvania                                                                                         | Norristown, Borough, Montgomery County (Docket No. FEMA-6027) | Schuylkill River                                                                          | Downstream Corporate Limits                                                                                                    | * 75                                                     |       |
|                                                                                                      |                                                               |                                                                                           | Upstream Corporate Limits                                                                                                      | * 80                                                     |       |
|                                                                                                      |                                                               | Stony Creek                                                                               | Confluence with Schuylkill River                                                                                               | * 79                                                     |       |
|                                                                                                      |                                                               |                                                                                           | Upstream Markley and Elm Streets                                                                                               | * 84                                                     |       |
|                                                                                                      |                                                               |                                                                                           | Upstream Steriger Street                                                                                                       | * 93                                                     |       |
|                                                                                                      |                                                               |                                                                                           | Upstream Dam                                                                                                                   | * 97                                                     |       |
|                                                                                                      |                                                               |                                                                                           | Approximately 1,680' upstream Dam                                                                                              | * 108                                                    |       |
|                                                                                                      |                                                               |                                                                                           | Confluence with Tributary to Stony Creek                                                                                       | * 115                                                    |       |
|                                                                                                      |                                                               |                                                                                           | Approximately 165' upstream of confluence of Tributary to Stony Creek                                                          | * 116                                                    |       |
|                                                                                                      |                                                               | Tributary to Stony Creek                                                                  | Confluence with Stony Creek                                                                                                    | * 115                                                    |       |
|                                                                                                      |                                                               |                                                                                           | Approximately 780' upstream of confluence with Stony Creek                                                                     | * 123                                                    |       |
|                                                                                                      |                                                               | Sawmill Run                                                                               | Upstream Fomance Street Dam                                                                                                    | * 143                                                    |       |
|                                                                                                      |                                                               |                                                                                           | Downstream Johnson Highway                                                                                                     | * 158                                                    |       |



## Final Base (100-Year) Flood Elevations—Continued

| State                                                                                                                       | City/town/county                                              | Source of flooding             | Location                                                                                                                                                                                                                                                                                                                                                                                                                                          | # Depth in feet above ground.<br>* Elevation in feet (NGVD)  |
|-----------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------|--------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------|
| Rhode Island                                                                                                                | Central Falls, City, Providence County (Docket No. FEMA-6020) | Blackstone River               | Downstream Corporate Limits<br>Upstream side of Pantex Dam<br>Downstream side of downstream Conrail crossing<br>Sayles Dam<br>75' upstream of Broad Street<br>Upstream Corporate Limits                                                                                                                                                                                                                                                           | *35<br>*45<br>*47<br>*60<br>*61<br>*62                       |
| Maps available for inspection at the City Hall, 580 Broad Street, Central Falls, Rhode Island.                              |                                                               |                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                              |
| Rhode Island                                                                                                                | Woonsocket, City, Providence County (Docket No. FEMA-6015)    | Blackstone River               | Downstream Corporate Limits<br>Upstream of Conrail<br>Just downstream of Woonsocket Falls Dam<br>Just upstream of Woonsocket Falls Dam<br>Upstream Corporate Limits                                                                                                                                                                                                                                                                               | *116<br>*126<br>*135<br>*151<br>*160                         |
|                                                                                                                             |                                                               | Mill River                     | Approximately 1,200' upstream of confluence with Blackstone River.<br>Just upstream of Privilege Street<br>Upstream of 1st dam downstream of Diamond Hill Road.<br>Upstream of 2nd dam downstream of Diamond Hill Road.<br>Upstream of 3rd dam downstream of Diamond Hill Road.<br>Upstream Corporate Limits                                                                                                                                      | *130<br>*141<br>*151<br>*158<br>*165<br>*171                 |
|                                                                                                                             |                                                               | Peters River                   | Approximately 1,180' upstream of confluence with Blackstone River.<br>Just downstream of Mill Street<br>Upstream of Guerin Spinning Dam<br>Approximately 900' upstream of Guerin Spinning Dam<br>Approximately 60' downstream of unnamed Dam.<br>Downstream of Wood Avenue<br>Upstream Corporate Limits                                                                                                                                           | *134<br>*144<br>*155<br>*165<br>*176<br>*181<br>*188         |
| Maps available for inspection at the Office of the City Engineer, City Hall, 169 Main Street, Woonsocket, Rhode Island.     |                                                               |                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                              |
| Virginia                                                                                                                    | Fauquier County (Docket No. FEMA-6015)                        | Tinpot Run (overland flooding) | Intersection of Southern Railway and southwest corporate limits of Town of Remington.<br>Intersection of State Route 651 and the northwest corporate limit of the Town of Remington.                                                                                                                                                                                                                                                              | *277<br>*277                                                 |
| Maps available for inspection at the Office of the Fauquier County Administrator, 40 Culpepper Street, Warrenton, Virginia. |                                                               |                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                              |
| Wisconsin                                                                                                                   | (C) Franklin Milwaukee County (Docket No. FEMA-6014)          | Root River                     | At South 27th Street<br>At West South County Line Road located about 1.65 miles downstream of South 60th Street.<br>At South 60th Street<br>Just upstream of West Ryan Road<br>At confluence of East Branch Root River<br>Just downstream of West Rawson Avenue<br>At the corporate limits located about 0.45 mile downstream of State Highway 36.<br>At the most upstream corporate limits located about 0.8 mile upstream of South 76th Street. | *677<br>*680<br>*682<br>*686<br>*694<br>*703<br>*704<br>*708 |
|                                                                                                                             |                                                               | East Branch Root River         | At the mouth<br>Approximately 0.37 mile downstream of South 51st Street.<br>Just upstream of South 51st Street<br>Just upstream of West Drexel Avenue<br>Approximately 0.56 mile downstream of West Rawson Avenue.<br>Just upstream of West Rawson Avenue.<br>Approximately 0.06 mile downstream of the confluence of Woods Creek.                                                                                                                | *694<br>*705<br>*716<br>*717<br>*734<br>*746<br>*752         |
|                                                                                                                             |                                                               | Tess Corners Creek             | At the upstream corporate limits located at West College Avenue.<br>Just upstream of South Lovers Lane<br>Just upstream of Private Drive located about 0.26 mile upstream of South Lovers Lane.<br>Just downstream of West Forest Home Avenue<br>Just upstream of North Cape Road                                                                                                                                                                 | *762<br>*740<br>*747<br>*758<br>*767                         |
|                                                                                                                             |                                                               | Woods Creek                    | At the upstream corporate limits (county boundary)<br>At the mouth<br>At the upstream corporate limits located at West College Avenue.                                                                                                                                                                                                                                                                                                            | *772<br>*753<br>*758                                         |
|                                                                                                                             |                                                               | Oak Creek                      | At the downstream corporate limits located at South 27th Street.<br>Just upstream of South 31st Street<br>Just downstream of State Highway 100<br>Just upstream of State Highway 100<br>Approximately 0.1 mile upstream of State Highway 100.<br>Just upstream of West Southland Drive                                                                                                                                                            | *693<br>*698<br>*709<br>*712<br>*714<br>*733                 |



[National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator].

Issued: July 31, 1981.

Wallace S. Towe, Jr.,

Acting Administrator, Federal Insurance Administration

[FR Doc. 81-23667 Filed 8-13-81; 8:45 am]

BILLING CODE 6718-03-M

#### 44 CFR Part 67

#### National Flood Insurance Program; Final Flood Elevation Determinations; Alabama, et al.

**AGENCY:** Federal Insurance Administration, FEMA.

**ACTION:** Final rule.

**SUMMARY:** Final base (100-year) flood elevations are listed below for selected locations in the nation.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required either to adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

**EFFECTIVE DATE:** The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the community.

**ADDRESSES:** See table below.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert G. Chappell, National Flood

Insurance Program, (202) 755-5585, Federal Emergency Management Agency, Washington, D.C. 20472.

**SUPPLEMENTARY INFORMATION:** The Federal Insurance Administrator gives notice of the final determination of flood elevation for each community listed.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1968 (title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 44 CFR Part 67). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 44 CFR Part 60.

Pursuant to the provisions of 5 U.S.C. 805(b), the Administrator, to whom

authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the (final) flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the flood plain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts flood plain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the flood plain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

The final base (100-year) flood elevations for selected locations are:

#### Final Base (100-Year) Flood Elevations

| State                                                                              | City/town/county                                                                | Source of flooding | Location                                               | #Depth in feet above ground.<br>*Elevation in feet (NGVD) |
|------------------------------------------------------------------------------------|---------------------------------------------------------------------------------|--------------------|--------------------------------------------------------|-----------------------------------------------------------|
| Alabama                                                                            | Town of Helena, Shelby County, FEMA-6015                                        | Cahaba River       | Just downstream of County Highway 52                   | *402                                                      |
|                                                                                    |                                                                                 | Buck Creek         | Just downstream of the corporate limits                | *418                                                      |
|                                                                                    |                                                                                 | Prairie Brook      | Just downstream of County Highway 52 (4th Avenue East) | *412                                                      |
|                                                                                    |                                                                                 | Lee Brook          | Just upstream of the Dam                               | *437                                                      |
|                                                                                    | Maps available for inspection at City Hall, Main Street, Helena, Alabama 35080. |                    |                                                        |                                                           |
| Alabama                                                                            | Town of Hurtsboro, Russell County, FEMA-6020                                    | Hurtsboro Creek    | Just upstream of Seaboard Coast Line Railroad          | *337                                                      |
| Maps available for inspection at Town Hall, Main Street, Hurtsboro, Alabama 36860. |                                                                                 |                    |                                                        |                                                           |
| Alabama                                                                            | Unincorporated Areas of Montgomery County, FEMA-6020                            | Alabama River      | Just downstream of the confluence of Catoma Creek      | *158                                                      |
|                                                                                    |                                                                                 | Tallapoosa River   | Just upstream of confluence of Mill Creek              | *175                                                      |
|                                                                                    |                                                                                 |                    | Just upstream of confluence of Miller Creek            | *178                                                      |
|                                                                                    |                                                                                 |                    | Just upstream of confluence of Line Creek              | *184                                                      |
|                                                                                    |                                                                                 | Pintalla Creek     | Just downstream of U.S. Highway 80                     | *163                                                      |
|                                                                                    |                                                                                 |                    | Just upstream of Pinchony Creek                        | *191                                                      |
|                                                                                    |                                                                                 |                    | Just downstream of U.S. Highway 31                     | *204                                                      |
|                                                                                    |                                                                                 | Pinchony Creek     | Just upstream of Federal Road                          | *209                                                      |
|                                                                                    |                                                                                 |                    | Just upstream of Tabernacle Road                       | *220                                                      |
|                                                                                    |                                                                                 | Vickers Creek      | Just downstream of U.S. Highway 31                     | *227                                                      |



## Final Base (100-Year) Flood Elevations—Continued

| State                                                                                                                       | City/town/county                                          | Source of flooding          | Location                                                                                                   | #Depth in feet above ground. Elevation in feet (NGVD) |
|-----------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------|-----------------------------|------------------------------------------------------------------------------------------------------------|-------------------------------------------------------|
|                                                                                                                             |                                                           | Johnsons Creek              | Just upstream of Montgomery County Road No. 2                                                              | *211                                                  |
|                                                                                                                             |                                                           |                             | Just upstream of Southern Railway                                                                          | *228                                                  |
|                                                                                                                             |                                                           | Mill Creek                  | Just upstream of Frontage Road                                                                             | *195                                                  |
|                                                                                                                             |                                                           |                             | At Georgia Railroad                                                                                        | *177                                                  |
|                                                                                                                             |                                                           | Miller Creek                | Just upstream of Interstate 85                                                                             | *193                                                  |
|                                                                                                                             |                                                           |                             | Just downstream of Highway 110                                                                             | *210                                                  |
|                                                                                                                             |                                                           | Line Creek                  | Just downstream of Interstate 85                                                                           | *187                                                  |
|                                                                                                                             |                                                           |                             | Just upstream of Barganier                                                                                 | *205                                                  |
|                                                                                                                             |                                                           | Matthews Slough             | Just upstream of Montgomery County Road No. 2                                                              | *210                                                  |
|                                                                                                                             |                                                           |                             | At Highway 110                                                                                             | *220                                                  |
| Maps available for inspection at Montgomery County Courthouse, 142 Washington Avenue, Montgomery, Alabama 36102.            |                                                           |                             |                                                                                                            |                                                       |
| Alabama                                                                                                                     | City of Rainbow City, Etowah County, FEMA-6015            | Horton Creek                | Just downstream of Ann Street                                                                              | *527                                                  |
|                                                                                                                             |                                                           | Tributary to Horton Creek   | Just downstream of Boyd Place                                                                              | *535                                                  |
|                                                                                                                             |                                                           | Big Wills Creek             | At upstream corporate limits                                                                               | *525                                                  |
|                                                                                                                             |                                                           | Dry Creek                   | Just upstream of Pleasant Valley Road                                                                      | *514                                                  |
|                                                                                                                             |                                                           | Coosa River                 | Downstream of the State Highway 77                                                                         | *513                                                  |
| Maps available for inspection at City Hall, 131 West Grand Avenue, Rainbow City, Alabama 35901.                             |                                                           |                             |                                                                                                            |                                                       |
| Alabama                                                                                                                     | City of Tuskegee, Macon County, FEMA-6020                 | Branch of Uphapee Creek     | Just upstream of the Tuskegee Corporate Limits and State Road 199                                          | *280                                                  |
|                                                                                                                             |                                                           |                             | Just downstream of U.S. Highway 90 and 29                                                                  | *294                                                  |
|                                                                                                                             |                                                           |                             | Just downstream of Hospital Drive                                                                          | *343                                                  |
|                                                                                                                             |                                                           | Branch One of Calabee Creek | Alabama Avenue II Extended                                                                                 | *318                                                  |
|                                                                                                                             |                                                           |                             | Tuskegee Corporate Limits                                                                                  | *311                                                  |
|                                                                                                                             |                                                           | Uphapee Creek               | Intersection of Auburn Wire Road and eastern Corporate Limits                                              | *271                                                  |
| Maps available for inspection at City Hall, 294 North Main Street, Tuskegee, Alabama 36083.                                 |                                                           |                             |                                                                                                            |                                                       |
| Arizona                                                                                                                     | Eagar (Town), Apache County, FEMA-6020                    | Little Colorado River       | 75 feet upstream from center of a Private Road (which is at the intersection of River Road and 4th Avenue) | *6995                                                 |
|                                                                                                                             |                                                           |                             | Intersection of river and center of School Bus Route                                                       | *7061                                                 |
| Maps available for inspection at Department of Public Works, Harless & Central, Eagar, Arizona.                             |                                                           |                             |                                                                                                            |                                                       |
| California                                                                                                                  | Folsom (City), Sacramento County, FEMA-6020               | American River              | Intersection of American River and center of Greenback Lane                                                | *138                                                  |
|                                                                                                                             |                                                           | Hinkle Creek                | 40 feet upstream from center of Oak Avenue Parkway                                                         | *270                                                  |
|                                                                                                                             |                                                           | Humbug Creek                | Intersection of Humbug Creek and Placerville Road                                                          | *285                                                  |
|                                                                                                                             |                                                           | Willow Creek                | 15 feet upstream from the center of Folsom Boulevard                                                       | *164                                                  |
|                                                                                                                             |                                                           |                             | 50 feet upstream from center of Placerville Road                                                           | *284                                                  |
| Maps available for inspection at Office of the City Engineer, 50 Natoma Street, Folsom, California.                         |                                                           |                             |                                                                                                            |                                                       |
| California                                                                                                                  | Lancaster (City), Los Angeles County, FEMA-6020           | Amargosa Creek              | Intersection of 6th Street West and Avenue L                                                               | #1                                                    |
|                                                                                                                             |                                                           | Amargosa Creek Tributary    | Intersection of Division Street and Avenue J                                                               | #1                                                    |
|                                                                                                                             |                                                           | Portal Ridge Wash           | Intersection of 30th Street West and Avenue H-6                                                            | *2312                                                 |
| Maps available for inspection at Department of Building and Engineering Services, 237 East Avenue M, Lancaster, California. |                                                           |                             |                                                                                                            |                                                       |
| California                                                                                                                  | Palmdale (City), Los Angeles County, FEMA-6020            | Amargosa Creek              | Intersection of Amargosa Creek and center of Avenue N                                                      | #1                                                    |
|                                                                                                                             |                                                           | Amargosa Creek Tributary    | Southeast corner of intersection of Valleyline Drive and Avenue M                                          | #1                                                    |
|                                                                                                                             |                                                           | Anaverde Creek              | Intersection of Avenue Q-7 and 5th Street East                                                             | #1                                                    |
|                                                                                                                             |                                                           | Avaverde Creek              | Intersection of Division Street and Palmdale Boulevard                                                     | #1                                                    |
| Maps available for inspection at Department of Building Inspection, 708 East Palmdale Boulevard, Palmdale, California.      |                                                           |                             |                                                                                                            |                                                       |
| California                                                                                                                  | Ridgecrest (City), Kern County, FEMA-6020                 | El Paso Wash                | At intersection of North Inyo Street and Ridgecrest-Inyokern Boulevard                                     | *2296                                                 |
|                                                                                                                             |                                                           | West China Lake Wash        | 200 feet west of intersection of North Warner Street and Felspar Street                                    | *2294                                                 |
| Maps available for inspection at City Engineer, 138 N. Balsam, Ridgecrest, California.                                      |                                                           |                             |                                                                                                            |                                                       |
| Colorado                                                                                                                    | Naturita (Town), Montrose County, FEMA-6015               | San Miguel River            | Approximately 50 feet north along West Third Avenue from its intersection with Park Drive                  | *5,388                                                |
|                                                                                                                             |                                                           |                             | Downstream side of State Highway 97 over the channel                                                       | *5,403                                                |
|                                                                                                                             |                                                           |                             | Approximately 50 feet northeast of the intersection of 1st Street and Porter Street                        | *5,408                                                |
| Maps available for inspection at Town Hall, Naturita, Colorado.                                                             |                                                           |                             |                                                                                                            |                                                       |
| Connecticut                                                                                                                 | Chaplin, Town, Windham County (Docket No. FEMA-6015)      | Natchaug River              | 2,360' downstream Phoenixville Road (State Route 198)                                                      | *280                                                  |
|                                                                                                                             |                                                           |                             | Immediately downstream Phoenixville Road                                                                   | *280                                                  |
|                                                                                                                             |                                                           |                             | 1,400' upstream Phoenixville Road                                                                          | *310                                                  |
|                                                                                                                             |                                                           |                             | Immediately upstream England Road                                                                          | *338                                                  |
|                                                                                                                             |                                                           |                             | 450' downstream Marcy Road                                                                                 | *360                                                  |
|                                                                                                                             |                                                           |                             | Upstream Corporate Limits                                                                                  | *384                                                  |
| Maps available for inspection at Chaplin Town Hall, Chaplin, Connecticut.                                                   |                                                           |                             |                                                                                                            |                                                       |
| Connecticut                                                                                                                 | East Granby, Town, Hartford County (Docket No. FEMA-6027) | Farmington River            | Downstream Corporate Limits                                                                                | *110                                                  |
|                                                                                                                             |                                                           |                             | Upstream State Route 187                                                                                   | *113                                                  |
|                                                                                                                             |                                                           |                             | Upstream Dam                                                                                               | *136                                                  |
|                                                                                                                             |                                                           |                             | Upstream State Route 189                                                                                   | *150                                                  |
|                                                                                                                             |                                                           |                             | Upstream Corporate Limits                                                                                  | *153                                                  |
|                                                                                                                             |                                                           | Salmon Brook                | Confluence with Farmington River                                                                           | *153                                                  |



## Final Base (100-Year) Flood Elevations—Continued

| State                                                                                                                               | City/town/county                                            | Source of flooding          | Location                                               | #Depth in feet above ground. *Elevation in feet (NGVD) |
|-------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------|-----------------------------|--------------------------------------------------------|--------------------------------------------------------|
|                                                                                                                                     |                                                             |                             | Upstream Floydville Road                               | *162                                                   |
|                                                                                                                                     |                                                             |                             | Upstream Corporate Limits                              | *166                                                   |
|                                                                                                                                     |                                                             | Stony Brook                 | Downstream Corporate Limits                            | *157                                                   |
|                                                                                                                                     |                                                             |                             | Upstream Corporate Limits                              | *162                                                   |
|                                                                                                                                     |                                                             | Sanborn Brook               | Confluence with Stony Brook                            | *159                                                   |
|                                                                                                                                     |                                                             |                             | Confluence of Creamery and Sheldens Brooks             | *161                                                   |
|                                                                                                                                     |                                                             | Sheldens Brook              | Confluence with Creamery and Sanborn Brooks            | *161                                                   |
|                                                                                                                                     |                                                             |                             | Downstream School Street                               | *169                                                   |
| Maps available for inspection at the East Granby First Selectman's/Building Department Office, Town Hall, East Granby, Connecticut. |                                                             |                             |                                                        |                                                        |
| Illinois                                                                                                                            | (V) Carol Stream, Du Page County (Docket No. FEMA-6015).    | Klein Creek                 | Just downstream of Kuhn Road                           | *745                                                   |
|                                                                                                                                     |                                                             |                             | Just downstream of Spillway No. 3                      | *749                                                   |
|                                                                                                                                     |                                                             |                             | Just downstream of Spillway No. 1                      | *753                                                   |
|                                                                                                                                     |                                                             |                             | At upstream corporate limits                           | *756                                                   |
|                                                                                                                                     |                                                             | Thunderbird Trail Creek     | At the confluence with Klein Creek                     | *747                                                   |
|                                                                                                                                     |                                                             |                             | Approximately 180 feet downstream of Thunderbird Trail | *748                                                   |
|                                                                                                                                     |                                                             |                             | Just upstream of Blackhawk Drive                       | *753                                                   |
|                                                                                                                                     |                                                             | Winfield Creek              | Within corporate limits                                | *747                                                   |
|                                                                                                                                     |                                                             | Klein Creek Tributary No. 3 | At mouth                                               | *756                                                   |
|                                                                                                                                     |                                                             |                             | Just upstream Old Gary Road                            | *758                                                   |
| Maps available for inspection at the Village Hall, 415 N. Gary Avenue, Carol Stream, Illinois.                                      |                                                             |                             |                                                        |                                                        |
| Illinois                                                                                                                            | (V) Hampton, Rock Island County (Docket No. FEMA-6027).     | Mississippi River           | Downstream corporate limits                            | *574                                                   |
|                                                                                                                                     |                                                             |                             | Upstream corporate limits                              | *574                                                   |
| Maps available for inspection at the Clerk's Office, Town Hall, 520 First Avenue, Hampton, Illinois.                                |                                                             |                             |                                                        |                                                        |
| Illinois                                                                                                                            | (V) Rapids City, Rock Island County (Docket No. FEMA-6027). | Mississippi River           | At downstream corporate limits                         | *578                                                   |
|                                                                                                                                     |                                                             |                             | At upstream corporate limits                           | *579                                                   |
| Maps available for inspection at the Clerk's Office, Village Hall, 730 17th Street, Rapids City, Illinois.                          |                                                             |                             |                                                        |                                                        |
| Maine                                                                                                                               | Gray, Town, Cumberland County (Docket No. FEMA-5979)        | Royal River                 | Downstream Corporate Limits                            | *96                                                    |
|                                                                                                                                     |                                                             |                             | Downstream Depot Road                                  | *102                                                   |
|                                                                                                                                     |                                                             |                             | Upstream Corporate Limits                              | *105                                                   |
|                                                                                                                                     |                                                             | Collyer Brook               | Confluence with Royal River                            | *103                                                   |
|                                                                                                                                     |                                                             |                             | 2,100' upstream of Pineland Dam                        | *112                                                   |
|                                                                                                                                     |                                                             |                             | Merrill Road (Upstream)                                | *120                                                   |
|                                                                                                                                     |                                                             |                             | 4,500' upstream of Merrill Road                        | *130                                                   |
|                                                                                                                                     |                                                             |                             | 3,800' downstream of Megquier Road                     | *139                                                   |
|                                                                                                                                     |                                                             |                             | 2,400' downstream of Megquier Road                     | *148                                                   |
|                                                                                                                                     |                                                             |                             | 1,300' downstream of Megquier Road                     | *155                                                   |
|                                                                                                                                     |                                                             |                             | 250' downstream of Megquier Road                       | *162                                                   |
|                                                                                                                                     |                                                             |                             | 1,300' upstream of Megquier Road                       | *172                                                   |
|                                                                                                                                     |                                                             |                             | 700' downstream of U.S. Route 202                      | *182                                                   |
|                                                                                                                                     |                                                             |                             | Confluence of Eddy Brook                               | *189                                                   |
|                                                                                                                                     |                                                             |                             | Weymouth Road (Upstream)                               | *199                                                   |
|                                                                                                                                     |                                                             |                             | Maine Turnpike (Upstream)                              | *212                                                   |
|                                                                                                                                     |                                                             |                             | 200' upstream of Woods Road                            | *222                                                   |
|                                                                                                                                     |                                                             |                             | 1,250' upstream of Woods Road                          | *230                                                   |
|                                                                                                                                     |                                                             |                             | 2,500' upstream of Woods Road                          | *240                                                   |
|                                                                                                                                     |                                                             |                             | 3,800' upstream of Woods Road                          | *250                                                   |
|                                                                                                                                     |                                                             |                             | 4,200' downstream of State Route 26                    | *258                                                   |
|                                                                                                                                     |                                                             |                             | 2,900' downstream of State Route 26                    | *269                                                   |
|                                                                                                                                     |                                                             |                             | 1,650' downstream of State Route 26                    | *279                                                   |
|                                                                                                                                     |                                                             |                             | Directly downstream of State Route 26                  | *290                                                   |
|                                                                                                                                     |                                                             |                             | Upstream of State Route 26                             | *306                                                   |
|                                                                                                                                     |                                                             |                             | North Raymond Road                                     | *312                                                   |
|                                                                                                                                     |                                                             | Eddy Brook                  | Confluence with Collyer Brook                          | *189                                                   |
|                                                                                                                                     |                                                             |                             | Corporate Limits (Upstream)                            | *195                                                   |
|                                                                                                                                     |                                                             | Pleasant River              | Downstream Corporate Limits                            | *219                                                   |
|                                                                                                                                     |                                                             |                             | 1,500' downstream of Totoloten Road                    | *229                                                   |
|                                                                                                                                     |                                                             |                             | Directly downstream of Totoloten Road                  | *233                                                   |
|                                                                                                                                     |                                                             |                             | Directly upstream of Totoloten Road                    | *239                                                   |
|                                                                                                                                     |                                                             |                             | Directly upstream of Windham Center Road               | *247                                                   |
|                                                                                                                                     |                                                             |                             | Directly downstream of Maine Turnpike                  | *252                                                   |
|                                                                                                                                     |                                                             | Thayer Brook                | Confluence with Pleasant River                         | *224                                                   |
|                                                                                                                                     |                                                             |                             | 200' downstream of U.S. Route 202                      | *228                                                   |
|                                                                                                                                     |                                                             | Tributary A                 | Confluence with Thayer Brook                           | *226                                                   |
|                                                                                                                                     |                                                             |                             | 250' downstream of U.S. Route 202                      | *230                                                   |
| Maps available for inspection at the Gray Town Offices, Gray, Maine.                                                                |                                                             |                             |                                                        |                                                        |
| Massachusetts                                                                                                                       | Marlborough, City, Middlesex County (Docket No. FEMA-6005). | Mowry Brook                 | Confluence with Sudbury Reservoir                      | *256                                                   |
|                                                                                                                                     |                                                             |                             | Upstream side of Farm Road Bridge                      | *266                                                   |
|                                                                                                                                     |                                                             |                             | Upstream side of Royce Road Bridge                     | *280                                                   |
|                                                                                                                                     |                                                             |                             | Upstream side of Phelps Street Bridge                  | *290                                                   |
|                                                                                                                                     |                                                             |                             | Approximately 700' upstream from Phelps Street Bridge  | *303                                                   |
|                                                                                                                                     |                                                             | Broad Meadow Brook          | Confluence with Sudbury Reservoir                      | *266                                                   |
|                                                                                                                                     |                                                             |                             | Approximately 440' downstream of the Aqueduct          | *266                                                   |
|                                                                                                                                     |                                                             |                             | Upstream of Private Drive (downstream crossing)        | *276                                                   |
|                                                                                                                                     |                                                             |                             | Approximately 100' upstream of Boston Post Road        | *281                                                   |
|                                                                                                                                     |                                                             | Walker Brook                | Downstream Corporate Limits                            | *256                                                   |
|                                                                                                                                     |                                                             |                             | Downstream of Walker Street Dam                        | *272                                                   |
|                                                                                                                                     |                                                             |                             | Upstream of Walker Street Dam                          | *285                                                   |
|                                                                                                                                     |                                                             |                             | Upstream of Walker Street                              | *290                                                   |



## Final Base (100-Year) Flood Elevations—Continued

| State                                                                                                             | City/town/county                                                    | Source of flooding     | Location                                                                                             | #Depth in feet above ground.<br>*Elevation in feet (NGVD) |
|-------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------|------------------------|------------------------------------------------------------------------------------------------------|-----------------------------------------------------------|
|                                                                                                                   |                                                                     |                        | Approximately 350' downstream of Maple Street                                                        | *300                                                      |
|                                                                                                                   |                                                                     |                        | Upstream of Maple Street                                                                             | *308                                                      |
|                                                                                                                   |                                                                     |                        | Approximately 200' upstream of Conrail                                                               | *315                                                      |
|                                                                                                                   |                                                                     | Hop Brook              | Downstream Corporate Limits                                                                          | *213                                                      |
|                                                                                                                   |                                                                     |                        | Upstream of Hagar Street                                                                             | *217                                                      |
|                                                                                                                   |                                                                     |                        | Approximately 200' upstream of Hagar Pond Dam                                                        | *226                                                      |
| Maps available for inspection at the City Clerk's Office, City Hall, 140 Main Street, Marlborough, Massachusetts. |                                                                     |                        |                                                                                                      |                                                           |
| Minnesota                                                                                                         | (C), Hayfield, Dodge County (Docket No. FEMA-6015)                  | East Fork Cedar River  | Just upstream of State Highway 56                                                                    | *1,302                                                    |
|                                                                                                                   |                                                                     |                        | About 50 feet upstream of 3rd Avenue S.W.                                                            | *1,306                                                    |
|                                                                                                                   |                                                                     |                        | About 100 feet upstream of Chicago and North Western railroad.                                       | *1,312                                                    |
|                                                                                                                   |                                                                     |                        | About 100 feet downstream of 1st Street Southeast                                                    | *1,314                                                    |
|                                                                                                                   |                                                                     |                        | Just downstream of 2nd Street Northeast                                                              | *1,322                                                    |
|                                                                                                                   |                                                                     | South Tributary        | About 520 feet upstream of confluence with East Fork Cedar River (just upstream of Field Road).      | *1,314                                                    |
|                                                                                                                   |                                                                     |                        | Just downstream of 8th Avenue Southeast                                                              | *1,326                                                    |
|                                                                                                                   |                                                                     | North Tributary        | At confluence with East Fork Cedar River                                                             | *1,302                                                    |
|                                                                                                                   |                                                                     |                        | Just upstream of Chicago and North Western railroad                                                  | *1,314                                                    |
|                                                                                                                   |                                                                     |                        | At upstream corporate limits                                                                         | *1,323                                                    |
| Maps available for inspection at the City Hall, P.O. Box 53, Hayfield, Minnesota.                                 |                                                                     |                        |                                                                                                      |                                                           |
| Minnesota                                                                                                         | (Uninc.) Houston County (Docket No. FEMA-6015)                      | Mississippi River      | Downstream state boundary                                                                            | *635                                                      |
|                                                                                                                   |                                                                     |                        | About 0.5 mile downstream of confluence of Root River                                                | *640                                                      |
|                                                                                                                   |                                                                     |                        | Upstream county boundary                                                                             | *645                                                      |
|                                                                                                                   |                                                                     | Pine Creek             | Just upstream of Chicago, Milwaukee, St. Paul and Pacific Railroad.                                  | *645                                                      |
|                                                                                                                   |                                                                     |                        | Just upstream of Unnamed Road (located about 0.5 mile upstream of State Route 16).                   | *654                                                      |
|                                                                                                                   |                                                                     |                        | Just upstream of County Highway 25                                                                   | *665                                                      |
|                                                                                                                   |                                                                     | Crooked Creek          | About 0.5 mile downstream of State Highway 249                                                       | *668                                                      |
|                                                                                                                   |                                                                     |                        | Just upstream of State Highway 249                                                                   | *674                                                      |
|                                                                                                                   |                                                                     |                        | About 1.1 miles upstream of State Highway 249                                                        | *691                                                      |
|                                                                                                                   |                                                                     | Thompson Creek         | About 1300 feet downstream of County Highway 18                                                      | *671                                                      |
|                                                                                                                   |                                                                     |                        | About 650 feet downstream of County Highway 18                                                       | *675                                                      |
|                                                                                                                   |                                                                     |                        | Just downstream of County Road                                                                       | *682                                                      |
|                                                                                                                   |                                                                     | Root River             | Just upstream of Chicago, Milwaukee, St. Paul and Pacific Railroad (downstream of State Highway 25). | *644                                                      |
|                                                                                                                   |                                                                     |                        | Just upstream of State Highway 16                                                                    | *652                                                      |
|                                                                                                                   |                                                                     |                        | About 0.5 mile downstream of State Highway 25                                                        | *668                                                      |
|                                                                                                                   |                                                                     |                        | About 1.4 miles downstream of confluence of South Fork Root River.                                   | *678                                                      |
|                                                                                                                   |                                                                     |                        | About 500 feet upstream of State Highway 76                                                          | *688                                                      |
|                                                                                                                   |                                                                     |                        | About 2.0 miles upstream of State Highway 76                                                         | *692                                                      |
|                                                                                                                   |                                                                     | South Fork Root River  | Confluence with Root River                                                                           | *679                                                      |
|                                                                                                                   |                                                                     |                        | Just upstream of State Highway 16                                                                    | *680                                                      |
|                                                                                                                   |                                                                     |                        | About 3.06 miles upstream of State Highway 16                                                        | *690                                                      |
| Maps available for inspection at the Houston County Courthouse, Caledonia, Minnesota.                             |                                                                     |                        |                                                                                                      |                                                           |
| Minnesota                                                                                                         | (C), Jordan, Scott County (Docket No. FEMA-6015)                    | Sand Creek             | About 0.8 mile downstream Syndicate Street                                                           | *734                                                      |
|                                                                                                                   |                                                                     |                        | About 2,200 feet downstream Syndicate Street                                                         | *740                                                      |
|                                                                                                                   |                                                                     |                        | About 100 feet upstream Syndicate Street                                                             | *744                                                      |
|                                                                                                                   |                                                                     |                        | About 90 feet upstream U.S. Highway 169                                                              | *751                                                      |
|                                                                                                                   |                                                                     |                        | Just upstream Varner Street                                                                          | *761                                                      |
|                                                                                                                   |                                                                     |                        | Just upstream Rice Street                                                                            | *766                                                      |
|                                                                                                                   |                                                                     |                        | About 250 feet upstream Chicago and North Western railroad (2nd crossing).                           | *772                                                      |
|                                                                                                                   |                                                                     |                        | Just upstream dam                                                                                    | *782                                                      |
|                                                                                                                   |                                                                     |                        | Just upstream State Highway 21                                                                       | *786                                                      |
|                                                                                                                   |                                                                     |                        | Just upstream Chicago and North Western railroad (3rd crossing).                                     | *792                                                      |
|                                                                                                                   |                                                                     |                        | Just upstream County Road 61                                                                         | *799                                                      |
|                                                                                                                   |                                                                     |                        | About 1,000 feet upstream County Road 61                                                             | *801                                                      |
| Maps available for inspection at the Jordan Government Center, 210 East 1st Street, Jordan, Minnesota.            |                                                                     |                        |                                                                                                      |                                                           |
| Minnesota                                                                                                         | (C), Kasson, Dodge County (Docket No. FEMA-6015)                    | Masten Creek           | At downstream corporate limits                                                                       | *1,226                                                    |
|                                                                                                                   |                                                                     |                        | Just upstream of 2nd Avenue southwest                                                                | *1,236                                                    |
|                                                                                                                   |                                                                     |                        | At upstream corporate limits                                                                         | *1,247                                                    |
|                                                                                                                   |                                                                     | Masten Creek Tributary | At mouth of Masten Creek                                                                             | *1,232                                                    |
|                                                                                                                   |                                                                     |                        | About 250 feet downstream of Mantorville Avenue south.                                               | *1,240                                                    |
| Maps available for inspection at the City Hall, 172 West Main Street, Kasson, Minnesota.                          |                                                                     |                        |                                                                                                      |                                                           |
| Missouri                                                                                                          | (C), Kimmswick, Jefferson County (Docket No. FEMA-6027).            | Mississippi River      | Within corporate limits                                                                              | *416                                                      |
| Maps available for inspection at the City Hall, P.O. Box 27, Kimmswick, Missouri.                                 |                                                                     |                        |                                                                                                      |                                                           |
| New Jersey                                                                                                        | East Brunswick, Township, Middlesex County, (Docket No. FEMA-6027). | Raritan River          | Confluence of South River                                                                            | *12                                                       |
|                                                                                                                   |                                                                     |                        | Upstream Corporate Limits                                                                            | *12                                                       |
|                                                                                                                   |                                                                     | South River            | Downstream Corporate Limits                                                                          | *12                                                       |
|                                                                                                                   |                                                                     |                        | Duhamel Lake Dam                                                                                     | *12                                                       |
|                                                                                                                   |                                                                     | Lawrence Brook         | Confluence of Raritan River                                                                          | *12                                                       |
|                                                                                                                   |                                                                     |                        | Downstream State Route 18                                                                            | *22                                                       |
|                                                                                                                   |                                                                     |                        | Upstream of upstream Westons Mill Dam                                                                | *25                                                       |
|                                                                                                                   |                                                                     |                        | Upstream Ryders Lane                                                                                 | *27                                                       |



## Final Base (100-Year) Flood Elevations—Continued

| State                                                                                                                                                  | City/town/county                                         | Source of flooding                                                                                        | Location                                                      | #Depth in feet above ground. *Elevation in feet (NGVD) |                               |     |
|--------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------|-----------------------------------------------------------------------------------------------------------|---------------------------------------------------------------|--------------------------------------------------------|-------------------------------|-----|
| New Jersey                                                                                                                                             | Folsom, Borough, Atlantic County (Docket No. FEMA-6020)  | Sawmill Brook                                                                                             | Downstream Riva Avenue                                        | *32                                                    |                               |     |
|                                                                                                                                                        |                                                          |                                                                                                           | Downstream Oakmont Avenue                                     | *53                                                    |                               |     |
|                                                                                                                                                        |                                                          |                                                                                                           | Upstream Corporate Limits                                     | *55                                                    |                               |     |
|                                                                                                                                                        |                                                          |                                                                                                           | Confluence with Lawrence Brook                                | *27                                                    |                               |     |
|                                                                                                                                                        |                                                          |                                                                                                           | Downstream New Jersey Turnpike                                | *31                                                    |                               |     |
|                                                                                                                                                        |                                                          |                                                                                                           | Downstream Tices Lane                                         | *36                                                    |                               |     |
|                                                                                                                                                        |                                                          |                                                                                                           | Downstream Kimberly Road                                      | *53                                                    |                               |     |
|                                                                                                                                                        |                                                          |                                                                                                           | Upstream Raritan River Railroad Culvert                       | *72                                                    |                               |     |
|                                                                                                                                                        |                                                          |                                                                                                           | Upstream Sherwood Avenue                                      | *74                                                    |                               |     |
|                                                                                                                                                        |                                                          |                                                                                                           | Upstream Cranbury Road                                        | *101                                                   |                               |     |
|                                                                                                                                                        |                                                          | Bog Brook                                                                                                 | Approximately 2,500' upstream of Cranbury Road                | *117                                                   |                               |     |
|                                                                                                                                                        |                                                          |                                                                                                           | Confluence with Lawrence Brook                                | *30                                                    |                               |     |
|                                                                                                                                                        |                                                          | Beaverdam Brook                                                                                           | Approximately 500' upstream from Fresh Ponds Road             | *37                                                    |                               |     |
|                                                                                                                                                        |                                                          |                                                                                                           | At Riva Avenue                                                | *54                                                    |                               |     |
|                                                                                                                                                        |                                                          | Ireland's Brook                                                                                           | Upstream Fresh Ponds Road                                     | *64                                                    |                               |     |
|                                                                                                                                                        |                                                          |                                                                                                           | Downstream Hardenburg Road                                    | *70                                                    |                               |     |
|                                                                                                                                                        |                                                          |                                                                                                           | Upstream New Jersey Turnpike                                  | *90                                                    |                               |     |
|                                                                                                                                                        |                                                          |                                                                                                           | Downstream Riva Avenue                                        | *55                                                    |                               |     |
|                                                                                                                                                        |                                                          | Cedar Brook                                                                                               | Downstream of Bridge Ruins                                    | *65                                                    |                               |     |
|                                                                                                                                                        |                                                          |                                                                                                           | Upstream Fresh Ponds Road                                     | *71                                                    |                               |     |
|                                                                                                                                                        |                                                          |                                                                                                           | Upstream New Jersey Turnpike                                  | *81                                                    |                               |     |
|                                                                                                                                                        |                                                          |                                                                                                           | Upstream Dunhams Corner Road                                  | *83                                                    |                               |     |
|                                                                                                                                                        |                                                          |                                                                                                           | Upstream Fern Road                                            | *92                                                    |                               |     |
|                                                                                                                                                        |                                                          |                                                                                                           | Upstream Corporate Limits                                     | *35                                                    |                               |     |
| Maps available for inspection at the Township Department of Planning and Community Development, Jean Walling Civic Center, East Brunswick, New Jersey. |                                                          |                                                                                                           |                                                               |                                                        |                               |     |
| New Jersey                                                                                                                                             | Folsom, Borough, Atlantic County (Docket No. FEMA-6020)  | Hospitality Branch                                                                                        | State Route 54                                                | *62                                                    |                               |     |
|                                                                                                                                                        |                                                          |                                                                                                           | Cushman Lake Embankment (Upstream)                            | *71                                                    |                               |     |
|                                                                                                                                                        |                                                          |                                                                                                           | Corporate Limits                                              | *74                                                    |                               |     |
|                                                                                                                                                        |                                                          | Great Egg Harbor                                                                                          | State Route 54                                                | *62                                                    |                               |     |
|                                                                                                                                                        |                                                          |                                                                                                           | Fourteenth Street                                             | *70                                                    |                               |     |
|                                                                                                                                                        |                                                          | Great Egg Harbor River Tributary                                                                          | Corporate Limits                                              | *73                                                    |                               |     |
|                                                                                                                                                        |                                                          |                                                                                                           | Confluence with Great Egg Harbor River                        | *70                                                    |                               |     |
|                                                                                                                                                        |                                                          |                                                                                                           | Corporate Limits                                              | *73                                                    |                               |     |
|                                                                                                                                                        |                                                          | Maps available for inspection at the Borough Hall, 13th Street and Mays Landing Road, Folsom, New Jersey. |                                                               |                                                        |                               |     |
|                                                                                                                                                        |                                                          | New Jersey                                                                                                | Hammonton, Town, Atlantic County (Docket No. FEMA-6015)       | Cedar Brook                                            | Wharton State Forest Boundary | *59 |
| Upstream Middle Road                                                                                                                                   | *66                                                      |                                                                                                           |                                                               |                                                        |                               |     |
| Route 205                                                                                                                                              | *74                                                      |                                                                                                           |                                                               |                                                        |                               |     |
| Liberty Street                                                                                                                                         | *84                                                      |                                                                                                           |                                                               |                                                        |                               |     |
| Maps available for inspection at the Town Hall, Third Street and Central Avenue, Hammonton, New Jersey.                                                |                                                          |                                                                                                           |                                                               |                                                        |                               |     |
| New York                                                                                                                                               | Clarkson, Town, Monroe County (Docket No. FEMA-6015)     | Moorman Creek                                                                                             | 700' downstream of Lawrence Road                              | *331                                                   |                               |     |
|                                                                                                                                                        |                                                          |                                                                                                           | Lawton Road (Upstream)                                        | *351                                                   |                               |     |
|                                                                                                                                                        |                                                          |                                                                                                           | 2,400' upstream of Lake Road                                  | *357                                                   |                               |     |
| Maps available for inspection at the Town Hall, 3710 Lake Road, Clarkson, New York.                                                                    |                                                          |                                                                                                           |                                                               |                                                        |                               |     |
| New York                                                                                                                                               | Haverstraw, Town, Rockland County (Docket No. FEMA-6015) | Hudson River                                                                                              | Entire shoreline within community                             | *8                                                     |                               |     |
|                                                                                                                                                        |                                                          |                                                                                                           | Downstream Corporate Limits                                   | *424                                                   |                               |     |
|                                                                                                                                                        |                                                          | Mahwah River                                                                                              | Upstream of Mohawk Lane                                       | *437                                                   |                               |     |
|                                                                                                                                                        |                                                          |                                                                                                           | Downstream of dam (1st upstream crossing)                     | *448                                                   |                               |     |
|                                                                                                                                                        |                                                          |                                                                                                           | Upstream of dam (1st upstream crossing)                       | *453                                                   |                               |     |
|                                                                                                                                                        |                                                          |                                                                                                           | Dam (3rd upstream crossing)                                   | *462                                                   |                               |     |
|                                                                                                                                                        |                                                          | Minisceongo Creek                                                                                         | Confluence with Hudson River                                  | *8                                                     |                               |     |
|                                                                                                                                                        |                                                          |                                                                                                           | Upstream Corporate Limits                                     | *12                                                    |                               |     |
|                                                                                                                                                        |                                                          | South Branch Minisceongo Creek                                                                            | Approximately 12,500' above confluence with Hudson River      | *179                                                   |                               |     |
|                                                                                                                                                        |                                                          |                                                                                                           | Downstream of Dam                                             | *180                                                   |                               |     |
|                                                                                                                                                        |                                                          |                                                                                                           | Upstream of Dam                                               | *204                                                   |                               |     |
|                                                                                                                                                        |                                                          |                                                                                                           | Approximately 1,600' upstream of dam                          | *210                                                   |                               |     |
|                                                                                                                                                        |                                                          |                                                                                                           | Approximately 4,750' upstream of dam                          | *260                                                   |                               |     |
|                                                                                                                                                        |                                                          |                                                                                                           | Upstream of Rosman Road                                       | *262                                                   |                               |     |
|                                                                                                                                                        |                                                          |                                                                                                           | Downstream of Dam                                             | *264                                                   |                               |     |
|                                                                                                                                                        |                                                          |                                                                                                           | Upstream of Dam                                               | *294                                                   |                               |     |
|                                                                                                                                                        |                                                          |                                                                                                           | Approximately 2,800' upstream of Dam                          | *334                                                   |                               |     |
|                                                                                                                                                        |                                                          |                                                                                                           | Approximately 600' downstream of Palisades Interstate Parkway | *378                                                   |                               |     |
|                                                                                                                                                        |                                                          |                                                                                                           | Approximately 2,500' upstream of Palisades Interstate Parkway | *385                                                   |                               |     |
|                                                                                                                                                        |                                                          | Tributary to the Ramapo River                                                                             | Quaker Road                                                   | *394                                                   |                               |     |
|                                                                                                                                                        |                                                          |                                                                                                           | Upstream Corporate Limits                                     | *395                                                   |                               |     |
|                                                                                                                                                        |                                                          |                                                                                                           |                                                               |                                                        |                               |     |
| Maps available for inspection at the Town Hall, Building Department, 41 New Main Street, Haverstraw, New York 10927.                                   |                                                          |                                                                                                           |                                                               |                                                        |                               |     |
| New York                                                                                                                                               | Hillburn Village, Rockland County (Docket No. FEMA-6027) | Ramapo River                                                                                              | Downstream Corporate Limits                                   | *276                                                   |                               |     |
|                                                                                                                                                        |                                                          |                                                                                                           | Confluence of Tributary to the Ramapo River                   | *278                                                   |                               |     |
|                                                                                                                                                        |                                                          |                                                                                                           | Downstream of Fourth Street                                   | *283                                                   |                               |     |
|                                                                                                                                                        |                                                          |                                                                                                           | Upstream of Fourth Street                                     | *287                                                   |                               |     |
|                                                                                                                                                        |                                                          |                                                                                                           | Upstream Corporate Limits                                     | *300                                                   |                               |     |
|                                                                                                                                                        |                                                          | Tributary to the Ramapo River                                                                             | Confluence with Ramapo River                                  | *278                                                   |                               |     |
|                                                                                                                                                        |                                                          |                                                                                                           | Upstream of Suffern Road                                      | *281                                                   |                               |     |
|                                                                                                                                                        |                                                          |                                                                                                           | Approximately 40' upstream of State Route 17                  | *292                                                   |                               |     |
|                                                                                                                                                        |                                                          |                                                                                                           | Upstream of Brook Street                                      | *300                                                   |                               |     |
|                                                                                                                                                        |                                                          |                                                                                                           | Approximately 1,400' upstream of Brook Street                 | *353                                                   |                               |     |



## Final Base (100-Year) Flood Elevations—Continued

| State                                                                                                      | City/town/county                                             | Source of flooding                                                                               | Location                                                      | #Depth in feet above ground. *Elevation in feet (NGVD) |
|------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------|--------------------------------------------------------------------------------------------------|---------------------------------------------------------------|--------------------------------------------------------|
| New York                                                                                                   | Lysander, Town, Onondaga County (Docket No. FEMA-6015)       | Cross Lake                                                                                       | Entire Shoreline within Town of Lysander                      | *382                                                   |
|                                                                                                            |                                                              | Seneca River                                                                                     | Confluence with Oneida and Oswego Rivers                      | *368                                                   |
|                                                                                                            |                                                              |                                                                                                  | Upstream of State Route 31                                    | *369                                                   |
|                                                                                                            |                                                              |                                                                                                  | Upstream of State Route 370                                   | *371                                                   |
|                                                                                                            |                                                              |                                                                                                  | Upstream of State Route 48                                    | *379                                                   |
|                                                                                                            |                                                              |                                                                                                  | Upstream of Plainville Road                                   | *381                                                   |
|                                                                                                            |                                                              | Oswego River                                                                                     | Confluence with Cross Lake                                    | *382                                                   |
|                                                                                                            |                                                              |                                                                                                  | Downstream Corporate Limits                                   | *384                                                   |
|                                                                                                            |                                                              |                                                                                                  | Confluence with Seneca and Oneida Rivers                      | *386                                                   |
|                                                                                                            |                                                              |                                                                                                  |                                                               |                                                        |
|                                                                                                            |                                                              | Maps available for inspection at the Lysander Town Hall, 6 Lock Street, Baldwinsville, New York. |                                                               |                                                        |
| New York                                                                                                   | Monroe, Village, Orange County (Docket No. FEMA-6005)        | Ramapo Creek                                                                                     | Downstream Corporate Limits                                   | *564                                                   |
|                                                                                                            |                                                              |                                                                                                  | Upstream of Freeland Street                                   | *573                                                   |
|                                                                                                            |                                                              |                                                                                                  | Confluence of Tributary No. 26                                | *580                                                   |
|                                                                                                            |                                                              |                                                                                                  | Downstream of Stage Road                                      | *591                                                   |
|                                                                                                            |                                                              |                                                                                                  | Upstream of First Dam                                         | *604                                                   |
|                                                                                                            |                                                              |                                                                                                  | Upstream of Lake Street (2nd crossing)                        | *614                                                   |
|                                                                                                            |                                                              |                                                                                                  | 180' upstream of Hill Street                                  | *620                                                   |
|                                                                                                            |                                                              |                                                                                                  | 500' downstream of Corlear Court                              | *632                                                   |
|                                                                                                            |                                                              |                                                                                                  | Upstream of Reynolds Road                                     | *648                                                   |
|                                                                                                            |                                                              |                                                                                                  | 370' upstream of Reynolds Road                                | *648                                                   |
|                                                                                                            |                                                              |                                                                                                  | Upstream Corporate Limits                                     | *667                                                   |
|                                                                                                            |                                                              | Pine Tree Brook                                                                                  | Confluence with Ramapo Creek                                  | *580                                                   |
|                                                                                                            |                                                              |                                                                                                  | 1,940' upstream of Ramapo Street                              | *585                                                   |
|                                                                                                            |                                                              |                                                                                                  | Downstream of second footbridge                               | *600                                                   |
|                                                                                                            |                                                              |                                                                                                  | Upstream of third footbridge                                  | *610                                                   |
|                                                                                                            |                                                              |                                                                                                  | Upstream of fifth footbridge                                  | *619                                                   |
|                                                                                                            |                                                              |                                                                                                  | Upstream of sixth footbridge                                  | *626                                                   |
|                                                                                                            |                                                              |                                                                                                  | 40' downstream of Still Road                                  | *643                                                   |
|                                                                                                            |                                                              |                                                                                                  | 260' upstream of Still Road                                   | *653                                                   |
|                                                                                                            |                                                              |                                                                                                  | 335' downstream of Pine Tree Road                             | *685                                                   |
|                                                                                                            |                                                              |                                                                                                  | 1,060' upstream of Pine Tree Road                             | *688                                                   |
|                                                                                                            |                                                              | Tributary No. 26                                                                                 | Confluence with Ramapo Creek                                  | *580                                                   |
|                                                                                                            |                                                              |                                                                                                  | 810' upstream of second footbridge                            | *582                                                   |
|                                                                                                            |                                                              | Tributary No. 25                                                                                 | Confluence with Ramapo Creek                                  | *585                                                   |
|                                                                                                            |                                                              |                                                                                                  | Upstream Corporate Limits                                     | *585                                                   |
| Maps available for inspection at the Office of the Town Engineer, 11-13 Stage Road, Monroe, New York.      |                                                              |                                                                                                  |                                                               |                                                        |
| New York                                                                                                   | North Tonawanda, City, Niagara County (Docket No. FEMA-6015) | Niagara River-Tonawanda Channel                                                                  | Downstream Corporate Limits                                   | *569                                                   |
|                                                                                                            |                                                              |                                                                                                  | Confluence of Tonawanda Creek                                 | *571                                                   |
|                                                                                                            |                                                              | Tonawanda Creek                                                                                  | Confluence with Niagara River-Tonawanda Channel               | *571                                                   |
|                                                                                                            |                                                              |                                                                                                  | Approximately 4,300' upstream of Twin Cities Memorial Highway | *572                                                   |
|                                                                                                            |                                                              |                                                                                                  | Walck Road (extended)                                         | *573                                                   |
|                                                                                                            |                                                              | Bull Creek                                                                                       | Upstream Corporate Limits                                     | *573                                                   |
|                                                                                                            |                                                              |                                                                                                  | Confluence with Tonawanda Creek                               | *573                                                   |
|                                                                                                            |                                                              |                                                                                                  | Confluence of Sawyer Creek                                    | *573                                                   |
|                                                                                                            |                                                              | Sewyer Creek                                                                                     | Confluence with Bull Creek                                    | *573                                                   |
|                                                                                                            |                                                              |                                                                                                  | Upstream Corporate Limits                                     | *575                                                   |
| Maps available for inspection at the City Engineer's Office, City Hall, North Tonawanda, New York.         |                                                              |                                                                                                  |                                                               |                                                        |
| New York                                                                                                   | Pendleton, Town, Niagara County (Docket No. FEMA-6015)       | Tonawanda Creek                                                                                  | Downstream Corporate Limits                                   | *573                                                   |
|                                                                                                            |                                                              |                                                                                                  | Upstream Corporate Limits                                     | *582                                                   |
|                                                                                                            |                                                              | Erie Canal                                                                                       | Confluence with Tonawanda Creek                               | *576                                                   |
|                                                                                                            |                                                              |                                                                                                  | 5,670' upstream of confluence with Tonawanda Creek            | *576                                                   |
|                                                                                                            |                                                              | North Tonawanda Creek                                                                            | Confluence with Erie Canal                                    | *576                                                   |
|                                                                                                            |                                                              |                                                                                                  | Confluence with Tonawanda Creek                               | *580                                                   |
|                                                                                                            |                                                              | Mud Creek                                                                                        | Confluence with Tonawanda Creek                               | *581                                                   |
|                                                                                                            |                                                              |                                                                                                  | Upstream Corporate Limits                                     | *581                                                   |
|                                                                                                            |                                                              | Bull Creek                                                                                       | Downstream Corporate Limits                                   | *573                                                   |
|                                                                                                            |                                                              |                                                                                                  | Downstream Allen Road                                         | *583                                                   |
|                                                                                                            |                                                              |                                                                                                  | Upstream Abandoned Railroad (first crossing)                  | *588                                                   |
|                                                                                                            |                                                              | Tributary Bull Creek                                                                             | Upstream Corporate Limits at Lockport Road                    | *603                                                   |
|                                                                                                            |                                                              |                                                                                                  | Confluence with Bull Creek                                    | *589                                                   |
| Upstream Mapleton Road                                                                                     | *597                                                         |                                                                                                  |                                                               |                                                        |
| Maps available for inspection at the Pendleton Town Hall, 6570 Campbell Boulevard, Lockport, New York.     |                                                              |                                                                                                  |                                                               |                                                        |
| New York                                                                                                   | Potsdam, Village, St. Lawrence County (Docket No. FEMA-6012) | Raquette River                                                                                   | Downstream Corporate Limits                                   | *399                                                   |
|                                                                                                            |                                                              |                                                                                                  | Downstream of Dam                                             | *403                                                   |
|                                                                                                            |                                                              |                                                                                                  | Upstream of Route 11 bridge                                   | *410                                                   |
|                                                                                                            |                                                              |                                                                                                  | Upstream Corporate Limits                                     | *412                                                   |
| Maps available for inspection at the Office of the Village Administrator, Civic Center, Potsdam, New York. |                                                              |                                                                                                  |                                                               |                                                        |
| New York                                                                                                   | Sloatsburg, Village, Rockland County (Docket No. FEMA-6027)  | Ramapo River                                                                                     | Downstream Corporate Limits                                   | *341                                                   |
|                                                                                                            |                                                              |                                                                                                  | Upstream of dam                                               | *354                                                   |
|                                                                                                            |                                                              |                                                                                                  | Upstream of Washington Avenue                                 | *375                                                   |
|                                                                                                            |                                                              |                                                                                                  | Upstream Corporate Limits                                     | *391                                                   |
|                                                                                                            |                                                              | Ramapo River Tributary                                                                           | Downstream of Orange Turnpike                                 | *381                                                   |
|                                                                                                            |                                                              |                                                                                                  | Upstream of Orange Turnpike                                   | *388                                                   |
|                                                                                                            |                                                              |                                                                                                  | Downstream of Private Drive                                   | *408                                                   |
|                                                                                                            |                                                              |                                                                                                  | Upstream Corporate Limits                                     | *413                                                   |



## Final Base (100-Year) Flood Elevations—Continued

| State                                                                                                                          | City/town/county                                        | Source of flooding            | Location                                                                           | #Depth in feet above ground. *Elevation in feet (NGVD) |
|--------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------|-------------------------------|------------------------------------------------------------------------------------|--------------------------------------------------------|
|                                                                                                                                |                                                         | Stony Brook                   | Confluence with Ramapo River                                                       | *355                                                   |
|                                                                                                                                |                                                         |                               | 300' downstream of Seven Lakes Road second crossing                                | *366                                                   |
|                                                                                                                                |                                                         |                               | Upstream of Seven Lakes Road second crossing                                       | *376                                                   |
|                                                                                                                                |                                                         |                               | Upstream of Seven Lakes Road third crossing                                        | *388                                                   |
|                                                                                                                                |                                                         |                               | Upstream Corporate Limits                                                          | *399                                                   |
|                                                                                                                                |                                                         | Nakoma Brook                  | Downstream Corporate Limits                                                        | *341                                                   |
|                                                                                                                                |                                                         |                               | Downstream of Wintergreen Road                                                     | *354                                                   |
|                                                                                                                                |                                                         |                               | Upstream of first dam                                                              | *370                                                   |
|                                                                                                                                |                                                         |                               | Upstream of second dam                                                             | *379                                                   |
|                                                                                                                                |                                                         |                               | Downstream of first weir                                                           | *390                                                   |
|                                                                                                                                |                                                         |                               | Upstream of Private Drive                                                          | *397                                                   |
|                                                                                                                                |                                                         |                               | Upstream Corporate Limits                                                          | *415                                                   |
|                                                                                                                                |                                                         | Nakoma Brook Tributary        | Confluence with Nakoma Brook                                                       | *346                                                   |
|                                                                                                                                |                                                         |                               | Upstream of Brook Street                                                           | *355                                                   |
|                                                                                                                                |                                                         |                               | Upstream of Sterling Mine Road                                                     | *387                                                   |
|                                                                                                                                |                                                         |                               | Upstream Corporate Limits                                                          | *369                                                   |
| Maps available for inspection at the Village Hall, 96 Orange Turnpike, Staatsburg, New York.                                   |                                                         |                               |                                                                                    |                                                        |
| Ohio                                                                                                                           | (V), Centerburg, Knox County (Docket No. FEMA-6027)     | North Fork Licking River      | About 225 feet downstream of White Road                                            | *1,177                                                 |
|                                                                                                                                |                                                         |                               | Just upstream of White Road                                                        | *1,180                                                 |
|                                                                                                                                |                                                         |                               | About 100 feet downstream of Main Street                                           | *1,193                                                 |
|                                                                                                                                |                                                         |                               | Just downstream of Conrail                                                         | *1,198                                                 |
|                                                                                                                                |                                                         |                               | Just upstream of Conrail                                                           | *1,203                                                 |
|                                                                                                                                |                                                         |                               | About 1,125 feet upstream of Conrail                                               | *1,204                                                 |
| Maps available for inspection at the Office of the Village Clerk, Village Hall, 27 North Hartford Avenue, Centerburg, Ohio.    |                                                         |                               |                                                                                    |                                                        |
| Oklahoma                                                                                                                       | City of Ardmore, Carter County (FEMA-6015)              | West Anadarche Creek          | Just upstream of Highway 775                                                       | *781                                                   |
|                                                                                                                                |                                                         |                               | Just upstream of Springdale Road                                                   | *793                                                   |
|                                                                                                                                |                                                         | Sand Creek Tributary B        | Just downstream of Dam (Lake Carter #1)                                            | *796                                                   |
|                                                                                                                                |                                                         |                               | Just upstream of Dam (Lake Carter #1)                                              | *817                                                   |
|                                                                                                                                |                                                         |                               | Just upstream of Refinery Road                                                     | *826                                                   |
|                                                                                                                                |                                                         | Hickory Creek                 | Just upstream of Myall Road                                                        | *810                                                   |
|                                                                                                                                |                                                         |                               | Just upstream of Plainview Road                                                    | *831                                                   |
|                                                                                                                                |                                                         | Hickory Creek Tributary A     | Just upstream of Veron Road                                                        | *801                                                   |
|                                                                                                                                |                                                         | Hickory Creek Tributary B     | Just upstream of U.S. Highway 70                                                   | *828                                                   |
|                                                                                                                                |                                                         |                               | Just downstream of O Street                                                        | *845                                                   |
|                                                                                                                                |                                                         | Hickory Creek Tributary C     | Just upstream of Atchinson Topeka and Santa Fe Railway                             | *842                                                   |
|                                                                                                                                |                                                         | Caddo Creek Tributary A       | Just downstream of Woods Lane                                                      | *772                                                   |
|                                                                                                                                |                                                         |                               | Just upstream of Woods Lane                                                        | *777                                                   |
|                                                                                                                                |                                                         | Caddo Creek Tributary B       | Approximately 400 feet upstream of mouth                                           | *772                                                   |
| Maps available for inspection at Engineer and Planning Office, City Hall, 23 South Washington Street, Ardmore, Oklahoma 73401. |                                                         |                               |                                                                                    |                                                        |
| Oregon                                                                                                                         | Cornelius (City), Washington County, FEMA-6020          | Tualatin River                | 800 feet south from the intersection of South 14th Avenue and South Dogwood Street | *151                                                   |
|                                                                                                                                |                                                         | Tualatin River Side Channel   | 700 feet west from the intersection of 9th Avenue and South Magnolia Street        | *155                                                   |
|                                                                                                                                |                                                         | Backwater from Dairy Creek    | At intersection of Council Creek and Susbauer Road                                 | *151                                                   |
| Maps available for inspection at City Hall, 120 N. 13th Avenue, Cornelius, Oregon.                                             |                                                         |                               |                                                                                    |                                                        |
| Oregon                                                                                                                         | Durham (City), Washington County FEMA-6020              | Tualatin River                | Intersection of river and center of Southwest Lower Boones Ferry Road              | *124                                                   |
|                                                                                                                                |                                                         |                               | Intersection of Fanno Creek and center of Burlington Northern Railroad             | *126                                                   |
| Maps available for inspection at City Hall, 17160 S.W. Upper Boones Ferry Road, Durham, Oregon.                                |                                                         |                               |                                                                                    |                                                        |
| Oregon                                                                                                                         | Sherwood (City), Washington County, FEMA-6020           | Cedar Creek                   | 100 feet upstream from center of State Highway 99 West                             | *162                                                   |
|                                                                                                                                |                                                         |                               | 100 feet upstream from center of West Villa Street                                 | *168                                                   |
|                                                                                                                                |                                                         | Rock Creek                    | Intersection of creek and center of Rock Creek Road                                | *135                                                   |
| Maps available for inspection at City Hall, 90 NW Park Street, Sherwood, Oregon.                                               |                                                         |                               |                                                                                    |                                                        |
| Oregon                                                                                                                         | Wilsonville (City), Clackamas County, FEMA-6020         | Willamette River              | 400 feet southeast of the intersection of Rose Lane and Wilsonville Road           | *90                                                    |
|                                                                                                                                |                                                         |                               | At the center of the Burlington Northern Railroad crossing of Willamette River     | *91                                                    |
|                                                                                                                                |                                                         | Seely Ditch                   | At the intersection of Bryton and Montebello Drive                                 | *145                                                   |
|                                                                                                                                |                                                         | East Overflow Ditch           | At the center of the Wilsonville Road crossing of East Overflow Ditch              | *145                                                   |
| Maps available for inspection at City Hall, 304 70 SW Parkway, Wilsonville, Oregon.                                            |                                                         |                               |                                                                                    |                                                        |
| Pennsylvania                                                                                                                   | Chapman, Township, Snyder County (Docket No. FEMA-6015) | Susquehanna River             | Downstream Corporate Limits (Extended)                                             | *409                                                   |
|                                                                                                                                |                                                         |                               | Approximately 12,000' upstream of the downstream Corporate Limits (Extended)       | *416                                                   |
|                                                                                                                                |                                                         |                               | Upstream Corporate Limits (Extended)                                               | *420                                                   |
|                                                                                                                                |                                                         | West Mahantango Creek         | Downstream side of Township Route 347 Bridge                                       | *409                                                   |
|                                                                                                                                |                                                         |                               | Approximately 3,000' upstream of Township Route 347 Bridge                         | *417                                                   |
|                                                                                                                                |                                                         |                               | Upstream side of State Route 104 Bridge                                            | *428                                                   |
|                                                                                                                                |                                                         | North Branch Mahantango Creek | Downstream side of Oriental Road Bridge                                            | *428                                                   |
|                                                                                                                                |                                                         |                               | Approximately 4,000' upstream of Oriental Road Bridge                              | *438                                                   |
|                                                                                                                                |                                                         |                               | Upstream side of Township Route 344 Bridge                                         | *450                                                   |
| Maps available for inspection at the Township Building, Old Route 11-15, Chapman, Pennsylvania.                                |                                                         |                               |                                                                                    |                                                        |



## Final Base (100-Year) Flood Elevations—Continued

| State                                                                                                                       | City/town/county                                            | Source of flooding                              | Location                                                                | #Depth in feet above ground. *Elevation in feet (NGVD) |
|-----------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------|-------------------------------------------------|-------------------------------------------------------------------------|--------------------------------------------------------|
| Pennsylvania                                                                                                                | Columbia, Borough, Lancaster County (Docket No. FEMA-5724)  | Susquehanna River                               | Confluence of Strickler Run                                             | *239                                                   |
|                                                                                                                             |                                                             |                                                 | State Route 462 (Upstream)                                              | *242                                                   |
|                                                                                                                             |                                                             | Tributary No. 11 to Susquehanna River           | U.S. Route 30                                                           | *244                                                   |
|                                                                                                                             |                                                             |                                                 | Corporate Limits                                                        | *246                                                   |
|                                                                                                                             |                                                             |                                                 | Seventh Street Culvert Inlet (Upstream)                                 | *333                                                   |
|                                                                                                                             |                                                             |                                                 | Eighth Street (Extended)                                                | *338                                                   |
|                                                                                                                             |                                                             |                                                 | Furnace Road (Downstream)                                               | *342                                                   |
|                                                                                                                             |                                                             |                                                 | Furnace Road (Upstream)                                                 | *348                                                   |
|                                                                                                                             |                                                             |                                                 | Ninth Street (Downstream)                                               | *353                                                   |
|                                                                                                                             |                                                             |                                                 | Ninth Street (Upstream)                                                 | *359                                                   |
|                                                                                                                             |                                                             |                                                 | U.S. Route 30 (Downstream)                                              | *370                                                   |
|                                                                                                                             |                                                             |                                                 | U.S. Route 30 (Upstream)                                                | *385                                                   |
|                                                                                                                             |                                                             | Tributary No. 12 to Susquehanna River           | Approximately 100' downstream of Kinderhook Road                        | *386                                                   |
|                                                                                                                             |                                                             |                                                 | Culvert Inlet Near Third and Linden Streets                             | *296                                                   |
|                                                                                                                             |                                                             |                                                 | U.S. Route 30 (Downstream)                                              | *300                                                   |
|                                                                                                                             |                                                             |                                                 | U.S. Route 30 (Upstream)                                                | *327                                                   |
|                                                                                                                             |                                                             |                                                 | Watertank Road (Downstream)                                             | *338                                                   |
|                                                                                                                             |                                                             |                                                 | Approach Dirt Road                                                      | *346                                                   |
|                                                                                                                             |                                                             |                                                 | Upstream Corporate Limits                                               | *354                                                   |
|                                                                                                                             |                                                             |                                                 | Shawnee Run                                                             | Confluence with Susquehanna River                      |
|                                                                                                                             |                                                             | State Route 441                                 |                                                                         | *247                                                   |
|                                                                                                                             |                                                             | Conrail (near Second Street) (Downstream)       |                                                                         | *247                                                   |
|                                                                                                                             |                                                             | Conrail (Near Second Street) (Upstream)         |                                                                         | *271                                                   |
|                                                                                                                             |                                                             | Florence Street (Upstream)                      |                                                                         | *276                                                   |
|                                                                                                                             |                                                             | Lancaster Avenue (Upstream)                     |                                                                         | *292                                                   |
|                                                                                                                             |                                                             | Upstream Conrail (Downstream)                   |                                                                         | *304                                                   |
|                                                                                                                             |                                                             | Upstream Conrail (Upstream)                     |                                                                         | *312                                                   |
|                                                                                                                             |                                                             | Farm Road (Downstream)                          |                                                                         | *342                                                   |
|                                                                                                                             |                                                             | Farm Road (Upstream)                            |                                                                         | *347                                                   |
|                                                                                                                             |                                                             | U.S. Route 30 Culvert (Downstream)              |                                                                         | *347                                                   |
|                                                                                                                             |                                                             | U.S. Route 30 Culvert (Upstream)                |                                                                         | *358                                                   |
|                                                                                                                             |                                                             | Tributary No. 1 to Shawnee Run<br>Strickler Run | Downstream Conrail Culvert (Upstream)                                   | *296                                                   |
| Upstream side of South Front Street                                                                                         | *242                                                        |                                                 |                                                                         |                                                        |
| First Corporate Limits                                                                                                      | *252                                                        |                                                 |                                                                         |                                                        |
| Second Corporate Limits                                                                                                     | *258                                                        |                                                 |                                                                         |                                                        |
| Upstream Conrail                                                                                                            | *260                                                        |                                                 |                                                                         |                                                        |
| Thirteenth Street (extended) at third Corporate Limits                                                                      | *265                                                        |                                                 |                                                                         |                                                        |
| Fourth Corporate Limits                                                                                                     | *278                                                        |                                                 |                                                                         |                                                        |
| Fifth Corporate Limits                                                                                                      | *282                                                        |                                                 |                                                                         |                                                        |
| Approximately 600' upstream of fifth Corporate Limits                                                                       | *287                                                        |                                                 |                                                                         |                                                        |
| Maps available for inspection at the Borough Building, 306 Locust Street, Columbia, Pennsylvania.                           |                                                             |                                                 |                                                                         |                                                        |
| Pennsylvania                                                                                                                | Middlecreek, Township, Snyder County (Docket No. FEMA-6015) | Middle Creek                                    | Downstream of Conrail                                                   | *463                                                   |
|                                                                                                                             |                                                             |                                                 | Upstream U.S. Route 522                                                 | *469                                                   |
|                                                                                                                             |                                                             |                                                 | Private Road (extended)                                                 | *471                                                   |
|                                                                                                                             |                                                             | Tributary 1                                     | Confluence with Middle Creek                                            | *469                                                   |
|                                                                                                                             |                                                             |                                                 | Upstream West Main Street (T-458)                                       | *476                                                   |
|                                                                                                                             |                                                             |                                                 | Approximately 715' upstream of West Main Street (T-458)                 | *487                                                   |
|                                                                                                                             |                                                             |                                                 | Approximately 430' upstream of Private Road                             | *496                                                   |
|                                                                                                                             |                                                             |                                                 | Approximately 870' upstream of Private Road                             | *509                                                   |
|                                                                                                                             |                                                             |                                                 | Approximately 1,200' upstream of Private Road                           | *522                                                   |
| Maps available for inspection at the residence of the Township Secretary, Mrs. Arta Heim, R.D. 2, Middleburg, Pennsylvania. |                                                             |                                                 |                                                                         |                                                        |
| Pennsylvania                                                                                                                | Redstone, Township, Fayette County (Docket No. FEMA-6027)   | Redstone Creek                                  | Approximately 300' downstream of T.R. 422                               | *770                                                   |
|                                                                                                                             |                                                             |                                                 | Upstream of upstream Conrail crossing                                   | *784                                                   |
|                                                                                                                             |                                                             |                                                 | Approximately 2,400' upstream of upstream Conrail crossing              | *789                                                   |
|                                                                                                                             |                                                             | Dunlap Creek                                    | Main Street (Upstream)                                                  | *943                                                   |
|                                                                                                                             |                                                             |                                                 | State Route 166 (Upstream)                                              | *951                                                   |
|                                                                                                                             |                                                             |                                                 | T.R. 750 (Downstream)                                                   | *958                                                   |
|                                                                                                                             |                                                             |                                                 | T.R. 613 (Upstream)                                                     | *964                                                   |
|                                                                                                                             |                                                             |                                                 | L.R. 26154 (Upstream)                                                   | *967                                                   |
|                                                                                                                             |                                                             | Sallick Run                                     | Confluence with Dunlap Creek                                            | *967                                                   |
|                                                                                                                             |                                                             |                                                 | Approximately 2,925' above confluence with Dunlap Creek                 | *974                                                   |
|                                                                                                                             |                                                             |                                                 | Approximately 4,825' above confluence with Dunlap Creek                 | *982                                                   |
|                                                                                                                             |                                                             |                                                 |                                                                         |                                                        |
| Maps available for inspection at the Redstone Municipal Building, R.D. 1, Grindstone, Pennsylvania 15442.                   |                                                             |                                                 |                                                                         |                                                        |
| South Carolina                                                                                                              | Unincorporated Areas of Dorchester County (FEMA 6020)       | Ashley River                                    | Approximately 1,000 feet downstream of State Highway 165 (Bacon Bridge) | *14                                                    |
|                                                                                                                             |                                                             |                                                 | Just upstream of U.S. Highway 17-A (Slacks Bridge)                      | *20                                                    |
|                                                                                                                             |                                                             |                                                 | Just downstream of U.S. Highway 78                                      | *26                                                    |
|                                                                                                                             |                                                             | Coosaw Creek                                    | Just upstream of Dorchester Road                                        | *14                                                    |
|                                                                                                                             |                                                             |                                                 | Just downstream of Field Road                                           | *21                                                    |
|                                                                                                                             |                                                             |                                                 | Just downstream of State Highway 642 (Dorchester Road)                  | *10                                                    |
|                                                                                                                             |                                                             | Eagle Creek                                     | Just downstream of the extension of State Road 501                      | *22                                                    |
|                                                                                                                             |                                                             |                                                 | Just upstream of State Highway 165                                      | *23                                                    |
|                                                                                                                             |                                                             |                                                 | Just downstream of Newington Boulevard                                  | *31                                                    |
|                                                                                                                             |                                                             | Sawmill Branch                                  | Approximately 500 feet upstream of U.S. Highway 78                      | *53                                                    |
|                                                                                                                             |                                                             |                                                 | Approximately 250 feet downstream of State Road 13                      | *37                                                    |
|                                                                                                                             |                                                             | Unnamed Tributary of Ashley River               |                                                                         |                                                        |



## Final Base (100-Year) Flood Elevations—Continued

| State                                                                                                                       | City/town/county                                                            | Source of flooding | Location                                                          | #Depth in feet above ground. *Elevation in feet (NGVD) |
|-----------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|--------------------|-------------------------------------------------------------------|--------------------------------------------------------|
|                                                                                                                             |                                                                             | Hurricane Branch   | Approximately 150 feet downstream of the State Road Entrance Ramp | *26                                                    |
|                                                                                                                             |                                                                             | Rumpha Hill Creek  | Approximately 100 feet upstream of State Highway 58               | *35                                                    |
|                                                                                                                             |                                                                             | Negro Branch       | Just upstream of Remen Boulevard                                  | *56                                                    |
|                                                                                                                             |                                                                             | Platt Branch       | Just upstream of the downstream most Oakwood Drive Crossing       | *37                                                    |
|                                                                                                                             |                                                                             | Stanley Branch     | Approximately 150 feet downstream of State Highway 22             | *42                                                    |
|                                                                                                                             |                                                                             |                    | Just downstream of State Highway 22                               | *31                                                    |
| Maps available for inspection at Planning Commission, 101 Ridge Street, County Courthouse, St. George, South Carolina 29477 |                                                                             |                    |                                                                   |                                                        |
| Vermont                                                                                                                     | Milton, Town, Chittenden County (Docket No. FEMA-6015)                      | Lamotte River      | Confluence with Lake Champlain                                    | *102                                                   |
|                                                                                                                             |                                                                             |                    | Approximately 300' upstream of U.S. Route 2                       | *106                                                   |
|                                                                                                                             |                                                                             |                    | Downstream of Peterson Dam                                        | *113                                                   |
|                                                                                                                             |                                                                             |                    | Upstream of Peterson Dam                                          | *154                                                   |
|                                                                                                                             |                                                                             |                    | Approximately 750' downstream of Great Falls Dam                  | *163                                                   |
|                                                                                                                             |                                                                             |                    | Approximately 500' downstream of Great Falls Dam                  | *193                                                   |
|                                                                                                                             |                                                                             |                    | Approximately 175' downstream of Great Falls Dam                  | *235                                                   |
|                                                                                                                             |                                                                             |                    | Approximately 100' upstream of Great Falls Dam                    | *257                                                   |
|                                                                                                                             |                                                                             |                    | Downstream of Clark Falls Dam                                     | *270                                                   |
|                                                                                                                             |                                                                             |                    | Upstream of Clark Falls Dam                                       | *290                                                   |
|                                                                                                                             |                                                                             |                    | Upstream Corporate Limits                                         | *291                                                   |
|                                                                                                                             |                                                                             | Lake Champlain     | Entire shoreline within community                                 | *102                                                   |
| Maps available for inspection at the Milton Town Office, Main Street, Milton, Vermont.                                      |                                                                             |                    |                                                                   |                                                        |
| Virginia                                                                                                                    | Belle Haven, Town, Accomack and Northampton Counties (Docket No. FEMA-6012) | Chesapeake Bay     | Ocohanock Creek shoreline                                         | *4                                                     |
| Maps available for inspection at the Belle Haven Town Offices or by contacting Mayor Peggy Robinson at (804) 442-7782.      |                                                                             |                    |                                                                   |                                                        |
| Wisconsin                                                                                                                   | (V), Kewaskum, Washington County (Docket No. FEMA-6015)                     | Milwaukee River    | About 0.8 mile downstream of the confluence of Kewaskum Creek     | *933                                                   |
|                                                                                                                             |                                                                             |                    | Just upstream of Kewaskum Dam                                     | *937                                                   |
|                                                                                                                             |                                                                             |                    | Upstream corporate limits                                         | *939                                                   |
|                                                                                                                             |                                                                             | North Creek        | Just upstream of confluence with Milwaukee River                  | *939                                                   |
|                                                                                                                             |                                                                             |                    | Just upstream of Fond Du Lac Avenue                               | *942                                                   |
|                                                                                                                             |                                                                             |                    | Upstream corporate limits                                         | *956                                                   |
|                                                                                                                             |                                                                             | Kewaskum Creek     | Just upstream of confluence with Milwaukee River                  | *936                                                   |
|                                                                                                                             |                                                                             |                    | Just upstream of County Highway H                                 | *939                                                   |
|                                                                                                                             |                                                                             |                    | Just upstream of Kewaskum Pond outlet structure                   | *942                                                   |
|                                                                                                                             |                                                                             |                    | Upstream corporate limits                                         | *945                                                   |
| Maps available for inspection at the Village Administrator's Office, Village Hall, 204 1st Street, Kewaskum, Wisconsin.     |                                                                             |                    |                                                                   |                                                        |

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator).

Issued: July 20, 1981.

Donald L. Collins,

Acting Administrator, Federal Insurance Administration.

[FR Doc. 81-23066 Filed 8-13-81; 8:45 am]

BILLING CODE 6718-03-M

## 44 CFR Part 67

### National Flood Insurance Program; Final Flood Elevation Determination; Pennsylvania

**AGENCY:** Federal Insurance Administration, FEMA.

**ACTION:** Final rule.

**SUMMARY:** Final base (100-year) flood elevations are listed below for selected locations in the nation.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required either to adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

**EFFECTIVE DATE:** The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the community.

**ADDRESS:** See table below.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert G. Chappell, National Flood Insurance Program; (202) 755-5585, Federal Emergency Management Agency, Washington, D.C. 20472.

**SUPPLEMENTARY INFORMATION:** The Federal Insurance Administrator gives notice of the final determination of flood elevations for each community listed.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 44 CFR Part 67). An opportunity for the community or

individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided, and the Administrator has resolved the appeals presented by the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 44 CFR Part 60.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the final flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a



local community, will govern construction within the floodplain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts floodplain ordinances in accord with

these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the floodplain and do not prescribe development. Thus, this action only forms the basis for future

local actions. It imposes no new requirement; of itself it has no economic impact.

The final base (100-year) flood elevations for selected locations are:

#### Final Base (100-year) Flood Elevations

| State        | City/town/county                                     | Source of flooding | Location                                                                                          | # Depth in feet above ground. * Elevation in feet (NGVD) |
|--------------|------------------------------------------------------|--------------------|---------------------------------------------------------------------------------------------------|----------------------------------------------------------|
| Pennsylvania | Hanover, Borough, York County (Docket No. FEMA-5924) | Slagle Run         | Upstream of Carlisle Street (State Route 94) Bridge                                               | *543                                                     |
|              |                                                      |                    | Confluence with Tributary No. 1                                                                   | *547                                                     |
|              |                                                      |                    | Approximately 1,000' upstream of confluence with Tributary No. 1                                  | *552                                                     |
|              |                                                      |                    | Approximately 2,200' upstream of confluence with Tributary No. 1                                  | *557                                                     |
|              |                                                      |                    | Upstream of Private Road Bridge, approximately 2,800' upstream of confluence with Tributary No. 1 | *563                                                     |
|              |                                                      |                    | Approximately 3,600' upstream of confluence with Tributary No. 1                                  | *565                                                     |

Maps available for inspection at the Municipal Building, 44 Frederick Street, between 9:00 a.m. and 4:00 p.m., Monday through Friday.

(National Flood Insurance Act of 1968 [Title XIII of Housing and Urban Development Act of 1968], effective January 28, 1969 [33 FR 17804, November 28, 1968], as amended; 42 U.S.C. 4001-4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator)

Issued: July 20, 1981.

Donald L. Collins,  
Acting Administrator, Federal Insurance Administration.

[FR Doc. 81-23696 Filed 8-13-81; 8:45 am]

BILLING CODE 6718-03-M

#### 44 CFR Part 70

[Docket No. FEMA 5909]

#### Letter of Map Amendment for the Village of Tinley Park, Ill., Under National Flood Insurance Program

**AGENCY:** Federal Insurance Administration, FEMA.

**ACTION:** Final rule.

**SUMMARY:** The Federal Insurance Administrator published a list of communities for which maps were published identifying Special Flood Hazard Areas. This list included the Village of Tinley Park, Illinois. It has been determined by the Federal Insurance Administrator, after acquiring additional flood information and after further technical review of the Flood Insurance Rate Map for the Village of Tinley Park, Illinois, that certain property is not within the Special Flood Hazard Area.

This map amendment, by establishing that the subject property is not within the Special Flood Hazard Area, removes the requirement to purchase flood insurance for that property as a condition of Federal or federally related financial assistance for construction or acquisition purposes.

**EFFECTIVE DATE:** August 14, 1981.

#### FOR FURTHER INFORMATION CONTACT:

Robert G. Chappell, P.E., Director, Engineering Division, Office of State and Local Programs and Support, National Flood Insurance Program, 451 Seventh Street SW., Washington, D.C. 20410, (202) 755-6570.

**SUPPLEMENTARY INFORMATION:** If a property owner was required to purchase flood insurance as a condition of Federal or federally related financial assistance for construction or acquisition purposes, and the lender now agrees to waive the property owner from maintaining flood insurance coverage on the basis of this map amendment, the property owner may obtain a full refund of the premium paid for the current policy year, provided that no claim is pending or has been paid on the policy in question during the same policy year. The premium refund may be obtained through the insurance agent or broker who sold the policy, or from the National Flood Insurance Program (NFIP) at: P.O. Box 34294, Bethesda, Maryland 20034, Phone: (800) 638-6620 toll free.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities.

This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

The Map amendments listed below are in accordance with § 70.7(b):

Map No. 170169, Panel No. 0005B, published on October 6, 1980, in 45 FR 66075, indicates that Building No. 7451-7459, Building No. 7500-7510, Building No. 7509-7517, Building No. 15912-15918 and Building No. 15921-15929, located on a 8.594-acre parcel, being part of the West Half of the Northeast Quarter of Section 24, Township 36 North, Range 12, East of the Third Principal Meridian, also being known as Bremen Towne Apartments, Village of Tinley Park, Cook County, Illinois, recorded as Document No. 22229123, in the Office of the Recorder of Cook County, Illinois, are located within the Special Flood Hazard Area.

Map No. 170169, Panel No. 0005B, is hereby corrected to reflect that the above-mentioned structures, located on the above-mentioned property are not within the Special Flood Hazard Area identified on December 4, 1979. The structures are in Zone C.

(National Flood Insurance Act of 1968 [Title XIII of Housing and Urban Development Act of 1968], effective January 28, 1969 [33 FR



17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator)

Issued: July 28, 1981.

Robert G. Chappell, P.E.,  
Director, Engineering Division Office of State  
and Local Programs and Support.

[FR Doc. 81-23685 Filed 8-13-81; 8:45 am]

BILLING CODE 6718-03-M

#### 44 CFR Part 70

[Docket No. FEMA 5909]

#### Letter of Map Amendment for the Village of Tinley Park, Ill., Under National Flood Insurance Program

AGENCY: Federal Insurance  
Administration, FEMA.

ACTION: Final rule.

**SUMMARY:** The Federal Insurance Administrator published a list of communities for which maps were published identifying Special Flood Hazard Areas. This list included the Village of Tinley Park, Illinois. It has been determined by the Federal Insurance Administrator, after acquiring additional flood information and after further technical review of the Flood Insurance Rate Map for the Village of Tinley Park, Illinois, that certain property is not within the Special Flood Hazard Area.

This map amendment, by establishing that the subject property is not within the Special Flood Hazard Area, removes the requirement to purchase flood insurance for that property as a condition of Federal or federally related financial assistance for construction or acquisition purposes.

**EFFECTIVE DATE:** August 14, 1981.

**FOR FURTHER INFORMATION CONTACT:** Robert G. Chappell, P.E., Director, Engineering Division, Office of State and Local Programs and Support, National Flood Insurance Program, 451 Seventh Street SW., Washington, D.C. 20410, (202) 755-6570.

**SUPPLEMENTARY INFORMATION:** If a property owner was required to purchase flood insurance as a condition of Federal or federally related financial assistance for construction or acquisition purposes, and the lender now agrees to waive the property owner from maintaining flood insurance coverage on the basis of this map amendment, the property owner may obtain a full refund of the premium paid for the current policy year, provided that no claim is pending or has been paid on the policy in question during the same policy year. The premium refund may be obtained through the insurance agent or

broker who sold the policy, or from the National Flood Insurance Program (NFIP) at: P.O. Box 34294, Bethesda, Maryland 20834, Phone: (800) 638-6620 toll free.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

The Map amendments listed below are in accordance with § 70.7(b):

Map No. 170189, Panel No. 0005B, published on October 6, 1980, in 45 FR 66075, indicates that Lots Nos. 1 and 2, Resubdivision of Outlot "A", Bremen Towne Estates Unit 6, Phase 2, Village of Tinley Park, Cook County, Illinois, recorded as Document No. 23732265, in the Office of the Recorder of Cook County, Illinois, are located within the Special Flood Hazard Area.

Map No. 170189, Panel No. 0005B, is hereby corrected to reflect that the residential structures located on the above-mentioned property are not within the Special Flood Hazard Area identified on December 4, 1979. The residential structure located on Lot No. 2 is in Zone B. The residential structure located on Lot No. 1 is in Zone C.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator)

Issued: July 28, 1981.

Robert G. Chappell, P.E.,  
Director, Engineering Division Office of State  
and Local Programs and Support.

[FR Doc. 81-23686 Filed 8-13-81; 8:45 am]

BILLING CODE 6718-03-M

#### FEDERAL COMMUNICATIONS COMMISSION

#### 47 CFR Part 73

[Docket No. 21136]

#### Radio Broadcast Services; Commission Policy Concerning the Noncommercial Nature of Educational Broadcast Stations; Correction

AGENCY: Federal Communications  
Commission.

**ACTION:** Correction to final rule.

**SUMMARY:** This action corrects an editorial omission in the Second Report and Order, 86 FCC 2d 141, adopted April 23, 1981, concerning Docket No. 21136, relating to Commission policy concerning the noncommercial nature of educational broadcast stations.

**ADDRESS:** Federal Communications  
Commission, Washington, D.C. 20554.

**FOR FURTHER INFORMATION CONTACT:**  
John Kamp, Broadcast Bureau (202) 632-6302.

#### SUPPLEMENTARY INFORMATION:

Released: August 7, 1981.

By the Commission:

1. In the *Second Report and Order*, 86 FCC 2d 141, adopted April 23, 1981, released May 19, 1981 (46 FR 27944; 5-22-81), the Commission took various actions related to the fundraising activities of public broadcast stations. In so doing, the Commission inadvertently omitted one line of the published report. This is to correct that error.

2. On page 27950, the text of paragraph 40, as corrected, reads as follows:

40. The Commission is persuaded that identification of in-kind contributors contemporaneously with the programs to which they [contribute] is in the public interest. In any case, contemporaneous identification of such donors is allowed under the general rule adopted today. Because the Commission's new rule permits contemporaneous identification of in-kind contributors to specific programs, much of the basis for proposing the two-minute breaks is no longer present. Also, we believe the identification resulting from the rule changes adopted today can be handled adequately under present practices for identifying general cash contributors, and general in-kind contributors. Accordingly, we will not now adopt the proposed rule creating additional "two-minute breaks" for acknowledging contributors. (Material in brackets was omitted in *Second Report and Order*.)

3. This action is taken pursuant to authority found in Sections 4(i), 5(d)(1), and 303(r) of the Communications Act of 1934, as amended.

4. For further information contact John F. Kamp, Broadcast Bureau (202) 632-6302.

Federal Communications Commission.  
William J. Tricarico,  
Secretary.

[FR Doc. 81-23612 Filed 8-13-81; 8:45 am]

BILLING CODE 6712-01-M



## Proposed Rules

Federal Register

Vol. 46, No. 157

Friday, August 14, 1981

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

### OFFICE OF PERSONNEL MANAGEMENT

#### 5 CFR Part 531

##### Pay Under the General Schedule

**AGENCY:** Office of Personnel Management.

**ACTION:** Proposed rule.

**SUMMARY:** The Office of Personnel Management proposes to prescribe a rule for determining a General Schedule employee's rate of basic pay upon loss of merit pay status. Such a rule is necessary because the current regulations provide pay determination rules for position or appointment changes and for conversion to the Merit Pay System, but not for loss of merit pay status. The proposed regulation would fill this gap in the current regulations.

**DATE:** Comments must be received on or before September 14, 1981.

**ADDRESS:** Written comments may be sent to Mr. Craig B. Pettibone, Director, Office of Pay and Benefits Policy, Compensation Group, Office of Personnel Management, Washington, D.C. 20044, or delivered to Room 4351, 1900 E Street, N.W., Washington, D.C.

**FOR FURTHER INFORMATION CONTACT:** Donald J. Winstead, (202)-632-4634, or Pete Rymshaw, (202)-632-6127.

**SUPPLEMENTARY INFORMATION:** Section 5334(a) of title 5, United States Code, authorizes the Office of Personnel Management (OPM) to prescribe regulations governing the rate of basic pay to which an employee is entitled upon reemployment, reassignment, promotion, demotion, or change in type of appointment and when "his employment status is otherwise changed." OPM has exercised its authority under this section of law by prescribing rules for determining the maximum rate payable to a General Schedule employee upon a position or appointment change (5 CFR 531.203(c)) and upon conversion to the Merit Pay System (5 CFR 531.204(c)). However,

when an employee loses his or her merit pay status as a result of a prospective change in the agency's merit pay coverage determination, no position or appointment change occurs. The current regulations do not provide a rule for determining the employee's rate of basic pay in such a situation.

While the current rules for determining the maximum rate payable to a General Schedule employee upon a position or appointment change could be revised to apply to loss of merit pay status, OPM has determined that it would be inappropriate to permit an agency to exercise its discretion under those rules by setting an employee's rate of basic pay at a rate lower than the rate to which he or she was entitled under the Merit Pay System. Therefore, the proposed regulation provides that an employee who loses his or her merit pay status as a result of a prospective change in the agency's merit pay coverage determination shall be entitled to basic pay at the lowest rate of the grade of his or her position that is equal to or greater than his or her existing rate of basic pay under the Merit Pay System.

The Director, Office of Personnel Management, finds that good cause exists for reducing the comment period on this proposed rule from sixty to thirty days. The comment period is reduced to facilitate the development of a final rule prior to full implementation of the Merit Pay System in October 1981.

#### E.O. 12291, Federal Regulation

OPM has determined that this is not a major rule for the purposes of E.O. 12291, Federal Regulation, because it will not result in:

- (1) An annual effect on the economy of \$100 million or more;
- (2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- (3) Significant adverse effects on competition, employment, investment, productivity, innovation, or in the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

#### Regulatory Flexibility Act

The Director, Office of Personnel Management, certifies that this regulation will not have a significant economic impact on a substantial number of small entities, including small

business, small organizational units and small governmental jurisdictions.

Office of Personnel Management.

Beverly McCain Jones,

Issuance System Manager.

Accordingly, the Office of Personnel Management proposes to add a new paragraph (d) to § 531.204 of Title 5, Code of Federal Regulations, to read as follows:

#### PART 531—PAY UNDER THE GENERAL SCHEDULE

##### Subpart B—Determining Rate of Basic Pay

##### § 531.204 Special provisions.

(d) *Pay determination upon loss of merit pay status.* When an employee loses his or her merit pay status as a result of a prospective change in the agency's merit pay coverage determination, the employee shall be entitled to basic pay at the lowest rate of the grade of his or her position that is equal to or greater than his or her existing rate of basic pay.

(5 U.S.C. 5334, 5402)

[FR Doc. 81-25633 Filed 8-13-81; 8:45 am]

BILLING CODE 6325-01-M

### DEPARTMENT OF AGRICULTURE

#### Agricultural Marketing Service<sup>1</sup>

#### Food Safety and Quality Service

#### 7 CFR Part 2852

#### United States Standards for Grades of Frozen Cauliflower<sup>2</sup>

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The purpose of this proposed rule is to revise the voluntary U.S. Standards for Grades of Frozen

<sup>1</sup>The Commodity Services Program of the Food Safety and Quality Service of the U.S. Department of Agriculture (USDA) was transferred to the Agricultural Marketing Service of USDA by USDA Secretary's Memorandum 1000-1 issued June 17, 1981. A notice detailing the agencies' reorganization is being drafted for later publication.

<sup>2</sup>Compliance with the provisions of these standards shall not excuse failure to comply with the provisions of the Federal Food, Drug, and Cosmetic Act, or with applicable State laws and regulations.



Cauliflower. The proposed rule was developed by the U.S. Department of Agriculture (USDA) at the request of the frozen vegetable industry. The rule would: (1) de-emphasize the importance of uniform shape and symmetrical appearance of cauliflower clusters (florets); (2) allow for styles other than clusters; (3) replace the dual grade nomenclature with single letter grade designations; (4) convert the current variables (score points) standards to attributes type standards; and (5) require greater emphasis be given the factor of color after cooking. Its effect would be to improve the standards and promote orderly and efficient marketing.

**DATE:** Comments must be received on or before January 29, 1982.

**ADDRESS:** Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in duplicate to the Hearing Clerk, U.S. Department of Agriculture, Room 1077, South Building, Washington, D.C. 20250. Comments should reference the date and page number of this issue of the *Federal Register* and will be made available for public inspection in the Office of the Hearing Clerk during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Mr. Leon R. Cary, Processed Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-8194.

**SUPPLEMENTARY INFORMATION:** William T. Manley, Deputy Administrator, Marketing Program Operations, Agricultural Marketing Service, has determined that this proposed rule is not major. It will not result in an annual effect on the economy of \$100 million or more. There will be no major increase in cost or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions. It will not result in significant adverse effects on competition, employment, investments, productivity, innovations, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

William T. Manley, Deputy Administrator, Marketing Program Operations, Agricultural Marketing Service, has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act, Pub. L. 96-354 (5 U.S.C. 601), because it reflects current marketing practices.

The current voluntary grade standards for frozen cauliflower do not accommodate the use of mechanical

devices such as trimming machines which now perform processing operations previously done by hand. These mechanical devices produce clusters which are less uniform in size and shape and less symmetrical in appearance than those produced by hand trimming. Also, machine-processed cauliflower will often show partial or complete removal of the bud portion of the unit. However, trimmed shapes are "cosmetic" in nature and do not significantly affect the eating quality or the nutritional value of frozen cauliflower. This proposed rule would accommodate the use of mechanical trimming devices in cauliflower processing by de-emphasizing the importance of uniform shape and symmetry of cauliflower clusters.

The current grade standards cover only the styles of "clusters" and "small clusters." These styles, as well as other styles now available at the marketplace, such as "cuts" and "random cuts," would be covered by this proposed rule.

The existing grade standards for frozen cauliflower provide two names for each quality grade level. Currently, "Grade A" or "Fancy" are the terms used to describe the higher of two quality grade levels, and "Grade B" or "Extra Standard" are the terms applicable to the lower quality grade level acceptable in the marketplace. This proposed rule would delete the terms "Fancy" and "Extra Standard" and retain only the single letter grades of "Grade A" and "Grade B."

The current grade standards for frozen cauliflower specify a numerical scoring system (0 to 100 points) for assigning quality grades to the product. When the total score is 85 to 100 points, a "Grade A" or "Fancy" term is assigned. When the total score is 70 to 84 points a "Grade B" or "Extra Standard" term is assigned. Frozen cauliflower which is assigned a total score of less than 70 points is given a "Substandard" quality rating.

This proposed rule would change the procedure for assigning a quality grade and eliminate the numerical scoring system. The new system for determining whether the product quality meets or fails to meet a designated grade level is called "attributes sampling." Under this new system, the quality of the product is compared with the minimum quality permitted in the intended or designated grade. If the quality is as good as, or better than, the minimum quality permitted, the product would be assigned that grade. If the quality of the product is not as good as the minimum quality permitted, the product could not be assigned that grade. However, it could be assigned a lower grade.

Bleaching agents are sometimes used to retain or improve color in frozen cauliflower. Without these bleaching agents the cauliflower has a tendency to turn gray or off-white during processing. However, the cauliflower will normally return to a "good" or "reasonably good" color after cooking.

This proposed rule would place greater emphasis on the factor of color after cooking and therefore would not discriminate against natural coloration of the cauliflower prior to cooking. This would provide an incentive to processors to eliminate use of bleaching agents in cauliflower processing.

#### **PART 2852—PROCESSED FRUITS AND VEGETABLES, PROCESSED PRODUCTS THEREOF, AND CERTAIN OTHER PROCESSED FOOD PRODUCTS**

Accordingly, the proposed revision of Subpart—United States Standards for Grades of Frozen Cauliflower (7 CFR 2852.721 through 2852.730) would read as follows:

##### **Subpart—United States Standards for Grades of Frozen Cauliflower**

|          |                               |
|----------|-------------------------------|
| Sec.     |                               |
| 2852.721 | Product description.          |
| 2852.722 | Styles.                       |
| 2852.723 | Definitions of terms.         |
| 2852.724 | Recommended sample unit size. |
| 2852.725 | Grades.                       |
| 2852.726 | Factors of quality.           |
| 2852.727 | Classification of defects.    |
| 2852.728 | Tolerances for defects.       |
| 2852.729 | Sample size.                  |
| 2852.730 | Quality requirement criteria. |

##### **§ 2852.721 Product description.**

*Frozen Cauliflower* is the product prepared from fresh, clean, sound heads of the cauliflower plant (*Brassica oleracea botrytis*). The cauliflower is properly processed in accordance with good commercial practice to assure its preservation. Any functional optional ingredient(s) permissible under the provisions of the Federal Food, Drug, and Cosmetic Act may be used.

##### **§ 2852.722 Styles.**

(a) *Clusters (Florets)*—consist of individual segments of trimmed and cored cauliflower heads measuring not less than 20mm (0.8 in) in the smallest dimension.

(b) *Small Clusters (Small Florets)*—consist of individual segments of trimmed and cored cauliflower heads measuring less than 20mm (0.8 in) in the smallest dimension.

(c) *Cuts*—consist of trimmed and cored cauliflower heads that have been



cut into units of approximately uniform size and geometric shape.

(d) *Random Cuts and Pieces*—consist of trimmed and cored cauliflower head that have been cut into units of varying sizes and shapes.

#### § 2852.723 Definitions of terms.

(a) *Acceptable Quality Level (AQL)* means the maximum percent of defective units or the maximum number of defects per hundred units of product that, for the purpose of acceptance sampling, can be considered satisfactory as a process average.

(b) *Blemished* means any unit that is affected by dark discoloration, pathological injury, or insect injury to the extent that the appearance or eating quality is affected:

- (1) Slightly;
- (2) Materially; or
- (3) Seriously.

(c) *Character*. (1) *Good character* means that the individual units are firm and compact.

(2) *Reasonably good character* means that the individual units are at least reasonably firm and reasonably compact.

(3) *Poor character* means that the individual units fail the requirements for reasonably good character.

(d) *Color*. (1) *Good color* means that, after cooking, the buds or buttons possess a characteristic white to light cream color, which may be slightly variable. The individual units may possess a characteristic green color or bluish tint on the branches, and greenish yellow to light green modified leaves or bracts.

(2) *Reasonably good color* means that, after cooking, the buds or buttons may possess a variable characteristic color ranging from white to light cream to dull white or dark cream. The individual units may possess a characteristic green or bluish tint on the branches, and greenish yellow to light green modified leaves or bracts.

(3) *Poor color* means that, after cooking, the individual units fail the requirements for reasonably good color.

(e) *Defect* (or defective) means any nonconformance of a unit(s) of product from a specified requirement of a single quality characteristic.

(f) *Extraneous vegetable material (EVM)* means any objectionable vegetable material from other than the cauliflower plant which is harmless.

(g) *Flavor and odor*. *Normal flavor and odor* means the product, before or after cooking, is free from objectionable flavors and odors of any kind.

(h) *Fragment* (styles other than random cuts and pieces) means cauliflower material that will pass

through a U.S. standard wire mesh sieve with 8 mm (5/16 in) openings and coarse or modified detached leaves.

(i) *Loose stem* (styles other than random cuts and pieces) means any stem or portion of stem (other than a fragment) that is not attached to a segment.

(j) *Poorly trimmed* (styles other than random cuts and pieces) means that the appearance or eating quality of the unit is seriously affected by excessive mechanical damage, gouging, trimming or insufficient trimming.

(k) *Sample unit* means the amount of product specified to be used for grading. It may be:

- (1) The entire contents of a container;
- (2) A portion of the contents of a container;
- (3) A combination of the contents of two or more containers; or
- (4) A portion of unpacked product.

(l) *Segment* means an individual portion of a cauliflower head made up of buds or buttons and the adjoining stems or portions of stems, and may have attached modified leaves or bracts.

(m) *Smallest dimension* means the narrowest width of a cluster or small cluster as measured across the top of the unit.

(n) *Square centimeter (cm<sup>2</sup>)* means an area in the shape of a rectangle 1 cm by 5 cm.

(o) *Unit* means one cluster, small cluster, cut, random cut or piece of cauliflower as applicable for the style.

#### § 2852.724 Recommended sample unit size.

Acceptance in accordance with the requirements for quality is based on the recommended sample unit size of 500 g (17.6 oz).

#### § 2852.725 Grades.

(a) *U.S. Grade A* is the quality of frozen cauliflower that:

(1) Meets the following prerequisites in which the cauliflower:

- (i) Has similar varietal characteristics;
- (ii) Has a normal flavor and odor;
- (iii) Has a good overall brightness;
- (iv) Has a color such that the

following AQL's<sup>3</sup> are not exceeded: poor, 4.0, and total (reasonably good + poor), 8.5; and

(v) Has a character such that the following AQL's<sup>3</sup> are not exceeded: poor, 1.5, and total (reasonably good + poor), 20.0.

(2) Is within the limits for defects as classified in Table I or IA and specified in Tables II and III, as applicable.

(b) *U.S. Grade B* is the quality of frozen cauliflower that:

(1) Meets the following prerequisites in which the cauliflower:

- (i) Has similar varietal characteristics;
- (ii) Has a normal flavor and odor;
- (iii) Has a reasonably good overall brightness;
- (iv) Has a color such that the following AQL<sup>3</sup> is not exceeded: poor (total), 10.0; and
- (v) Has a character such that the following AQL<sup>3</sup> is not exceeded: poor (total) 20.0.

(2) Is within the limits for defects as classified in Table I or IA and specified in Tables II and III, as applicable.

(c) *Substandard* is the quality of frozen cauliflower that fails to meet the requirements of *U.S. Grade B*.

#### § 2852.726 Factors of quality.

The grade of frozen cauliflower is based on meeting the requirements for the following quality factors:

(a) *Prerequisite quality factors:*

- (1) Varietal characteristics;
- (2) Brightness;
- (3) Flavor and odor;
- (4) Color; and
- (5) Character.

(b) *Classified quality factors:*

- (1) Blemished;
- (2) Poor trim—(Clusters, Small Clusters and Cut Styles only);
- (3) Fragments—(Clusters, Small Clusters and Cut Styles only);
- (4) Loose Stem—(Clusters, Small Clusters and Cut Styles only); and
- (5) Extraneous vegetable material.

#### § 2852.727 Classification of defects.

Defects are classified as minor, major, severe, or critical. Each "X" in Table I or Table IA represents "one (1) defect."

Table I.—Classification of Defects; Clusters and Cuts Styles

| Quality factor                | Defect                               | Classification |       |        |          |
|-------------------------------|--------------------------------------|----------------|-------|--------|----------|
|                               |                                      | Minor          | Major | Severe | Critical |
| Blemished                     | Slightly (each 1 cm <sup>2</sup> )   | X              |       |        |          |
|                               | Materially (each 1 cm <sup>2</sup> ) |                | X     |        |          |
|                               | Seriously (each 1 cm <sup>2</sup> )  | X              |       |        |          |
| Poor trim                     | (each 5 g)                           | X              |       |        |          |
| Loose stem                    | (each 5 g)                           |                | X     |        |          |
| Fragments                     | (each 5 g)                           |                |       | X      |          |
| Extraneous vegetable material | (each piece)                         |                |       |        | X        |

<sup>3</sup> AQL expressed as percent defective (100-5 g increments in 500 g).



Table IA.—Random Cuts and Pieces Style

| Quality factor                 | Defect                               | Classification |       |        |          |
|--------------------------------|--------------------------------------|----------------|-------|--------|----------|
|                                |                                      | Minor          | Major | Severe | Critical |
| Blemished.                     | Slightly (each 1 cm <sup>2</sup> )   | X              |       |        |          |
|                                | Materially (each 1 cm <sup>2</sup> ) |                | X     |        |          |
|                                | Seriously (each 1 cm <sup>2</sup> )  | X              | X     |        |          |
| Extraneous vegetable material. | (each piece)                         |                |       |        | X        |

**§ 2852.728 Tolerance for defects**

An insignificant weight or area increment of defects limited to the first weight or area increment shall not be considered.

Table II.—Clusters, Small Clusters, and Cuts Styles

|         | Total* | Major | Severe | Critical |
|---------|--------|-------|--------|----------|
| Grade A |        |       |        |          |
| AQL*    | 25.0   | 12.5  | 5.0    | 0.15     |
| Grade B |        |       |        |          |
| AQL*    | 50.0   | 25.0  | 12.5   | 0.25     |

\* AQL expressed as defects per hundred units.

\* Total = Minor + Major Severe + Critical

Table III.—Random Cuts and Pieces Style

|         | Total* | Major | Severe | Critical |
|---------|--------|-------|--------|----------|
| Grade A |        |       |        |          |
| AQL*    | 20.0   | 6.5   | 4.0    | 0.15     |
| Grade B |        |       |        |          |
| AQL*    | 33.0   | 15.0  | 8.5    | 0.25     |

\* AQL expressed as defects per hundred units.

\* Total = Minor + Major Severe + Critical

**§ 2852.729 Sample size.**

The sample size to be used for lot grading or on-line grading to determine acceptance with the requirements of these standards shall be as specified in the sampling plans and procedures contained in the "Regulations Governing Inspection and Certification of Processed Fruits and Vegetables, Processed Products Thereof, and Certain Other Processed Food Products" (7 CFR 2852.1-2852.83).

**§ 2852.730 Quality requirement criteria.**

(a) *Lot grading.* A lot of frozen cauliflower is considered as meeting the requirements for quality if:

- (1) The prerequisite requirements specified in § 2852.725 are met; and
- (2) The Acceptable Quality Levels (AQL) in Tables II and III, as applicable for the style, are not exceeded.

(b) *On-line grading.* A portion of production is considered as meeting requirements for quality if:

- (1) The prerequisite requirements specified in § 2852.725 are met; and
- (2) The Acceptable Quality Levels (AQL) in Tables II and III, as applicable for the style, are not exceeded.

(c) *Single sample unit.* Each unofficial sample unit submitted for quality evaluation will be treated individually and is considered as meeting the requirements for quality if:

- (1) The prerequisite requirements specified in § 2852.725 are met; and
- (2) The Acceptable Quality Levels (AQL) in Tables II and III, as applicable for the style, are not exceeded.

(Agricultural Marketing Act of 1948, secs. 203, 205, 60 Stat. 1087, as amended, 1090, as amended; (7 U.S.C. 1622, 1624))

Done at Washington, D.C., on August 10, 1981.

William T. Manley,

Deputy Administrator, Marketing Program Operations.

[FR Doc. 81-23960 Filed 8-13-81; 9:45 am]

BILLING CODE 3410-DM-M

**FEDERAL TRADE COMMISSION****16 CFR Part 460****Trade Regulation Rule: Labeling and Advertising of Home Insulation**

AGENCY: Federal Trade Commission.

ACTION: Invitation for public comment.

**SUMMARY:** The Federal Trade Commission solicits public comment on petitions for an exemption from the Commission's trade regulation rule on labeling and advertising of home insulation (16 CFR Part 460) submitted by mobile home manufacturers and retailers. The Commission has not taken a position on whether to grant an exemption. On September 29, 1980, the Commission issued a temporary partial stay of Section 460.16 of the trade regulation rule insofar as it applies to mobile home industry members pending the Commission's decision on these petitions (45 FR 68927).

**DATE:** Written comments regarding the petitions will be accepted until October 13, 1981.

**ADDRESS:** Written comments should be addressed to the Secretary, Federal Trade Commission, 6th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580.

All comments should be captioned: "Comment—Proposed Mobile Home Exemption—Home Insulation Rule."

**FOR FURTHER INFORMATION CONTACT:**

Arturo Gonzalez-Alfonso, 202-724-1531.

Attorney, Division of Energy and Product Information, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

**SUPPLEMENTARY INFORMATION:** Three trade associations—the National Manufactured Housing Federation, Inc. (NMHF), the Manufactured Housing Institute, Inc. (MHI), and the Indiana Manufactured Housing Association, Inc. (IMHA)—have filed petitions of behalf of mobile home manufacturers and retailers requesting partial exemptions from the Commission's Rule, which went into effect on September 29, 1980. Pending the Commission's final determination on their respective petitions for exemptions, the three Petitioners requested a temporary partial stay of § 460.16 of the Rule as it applies to mobile home sellers. The Commission granted the temporary partial stay, effective as of September 29, 1980 (45 FR 68927).

All three Petitioners request that the mobile home industry be exempted from § 460.16 of the Rule. Section § 460.16 requires "new home" sellers, including mobile home sellers, to disclose in the sales contract the type, thickness, and R-value of any insulation installed in each part of the home. In addition, petitioners NMHF and IMHA request a complete exemption from the Rule, including §§ 460.18 and 460.19, which are only triggered if insulation ads are disseminated or energy savings claims are made.

The basic purpose of the R-value Rule is to give consumers a standard measurement of thermal efficiency that they can use to compare insulation products and to purchase the insulation product that matches their R-value needs. In deciding to include the sale of new homes within the Rule, the Commission noted that the R-value of the insulation installed in a new home is a material factor in the consumer's house-buying decision and that the pre-purchase disclosure of R-value in sales contracts would therefore assist the new home buyer in evaluating the energy efficiency of his or her home.<sup>1</sup>

The Petitioners assert that the Rule is unnecessary as to mobile homes because construction standards issued by the Department of Housing and Urban Development effectively fulfill the same purposes as the R-value Rule. Allegedly, the HUD standards provide consumers with (1) protection against buying an energy inefficient home by establishing minimum standards; and (2)

<sup>1</sup> Statement of Basis and Purpose, 44 FR 50232.



energy efficiency information in a "heat loss certificate" which facilitates comparison of thermal performance claims of competing mobile home manufacturers. In addition, petitioners argue that R-value information is not appropriate as a tool for comparison shopping in the mobile home industry because nearly all such homes have identical insulation due to certain inherent design limitations. Finally, petitioners argue that because the independent retailers have no direct knowledge of or control over the insulation installed in the home by the manufacturer, they are not in a position to make the sales contract disclosures required by § 460.16.

The Commission has not taken a position on whether to grant petitioners an exemption from the Rule. Initial research by Commission staff suggests that, contrary to the petitioners' assertion, at least some mobile home manufacturers offer a variety of insulation packages to buyers. For example, the "Manufactured Housing Dealer," a major mobile home trade journal, contains advertisements for energy efficient mobile homes and materials which provide greater amounts of insulation and higher R-values than are found in conventional mobile homes.<sup>2</sup> The availability of such optional "energy packages" and energy-saving construction features suggests the R-value information may be a valuable consumer tool for comparison shopping in the mobile home area. As the Commission noted in its Statement of Basis and Purpose for the Rule, the amount of insulation installed in a home may significantly affect the consumer's decision to buy.<sup>3</sup> If mobile home sellers offer a variety of insulation options, the R-value of the insulation may be a material factor in the consumer's purchase decision.

As petitioners point out, construction standards issued by the Department of Housing and Urban Development (HUD) require manufacturers to build mobile homes to a minimum thermal performance standard and to post a "heat loss certificate" on an interior wall where it is readily visible to the homeowner. The certificate must indicate the lowest outside temperature at which an inside temperature of 70° F. can be maintained. Presumably, a poorly insulated mobile home with a large an expensive heating unit could be issued the same "heat loss certificate" as a

well insulated mobile home with a modest heating unit. Without deciding the merits of petitioners' position that the HUD standards already regulate the overall thermal performance of mobile homes, the Commission notes that HUD standards set only minimum performance levels and do not require that R-values be disclosed to consumers. At this point, it is unclear whether the HUD standards are adequate to allow consumers to evaluate or compare homes when making a purchase decision. Moreover, the HUD standards do not apply to site-built homes and, therefore, cannot assist consumers who seek to compare a site-built home with a manufactured home. The more elaborate mobile homes, such as double-wide manufactured homes, are quite competitive with some site-built homes. Indeed, consumers may find it extremely useful to compare the insulation of manufactured homes with that of site-built homes.

With regard to other sections which would also apply to the mobile home industry, such as §§ 460.18 and 460.19, petitioners did not directly address why they should be exempted from them. The temporary stay granted by the Commission did not include these sections. Nevertheless, staff seeks this opportunity to have this issue specifically addressed by any interested parties.

The Commission solicits public comment on all aspects of the exemption requests from the Rule. Without restricting the area of response, the Commission is particularly interested in receiving comments on the following issues:

- Should petitioners be exempt from §§ 460.18 and 460.19, which apply if insulation ads contain certain triggering claims or energy-savings claims?
- To what extent do the construction standards issued by the Department of Housing and Urban Development effectively provide the information necessary for home buyers to evaluate the thermal efficiency or insulation of mobile homes?
- Are consumers interested in buying mobile homes which are more energy efficient than those which meet present HUD standards?
- To what extent do mobile home sellers offer a variety of insulating options?
- Is R-value information presently advertised to prospective purchasers of mobile homes?
- To what extent are potential mobile home buyers also potential site-built home buyers?

—What would disclosure of R-value cost the mobile home industry?

The petitions and the additional materials forwarded to the Commission by its staff have been placed on the public record and are available for public inspection. They have been filed as documents X-8 through X-12 and Y-15 through Y-34, respectively, in FTC file number 215-59.

By direction of the Commission.

Carol M. Thomas,

Secretary.

[FR Doc. 81-23862 Filed 8-13-81; 8:45 am]

BILLING CODE 6750-01-M

## CONSUMER PRODUCT SAFETY COMMISSION

### 16 CFR Part 1204

#### Omnidirectional Citizens Band Base Station Antennas; Proposed Consumer Product Safety Standard; Proposed Nonmandatory Test Method

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Proposed rule, proposed nonmandatory test method, and extension of time.

**SUMMARY:** The Consumer Product Safety Commission proposes two approaches for omnidirectional Citizens Band base station antennas to reduce the risk of injury to consumers caused by electric shock occurring when the antenna comes into contact with electrical power lines while the antenna is being put up or taken down. The first approach is to propose a standard as a mandatory consumer product safety rule. The second approach is to propose the standard as a nonmandatory test method which manufacturers could use voluntarily to produce antennas that would resist the transmission from power lines of a potentially lethal electrical current to consumers who are in contact with the antenna or its mast.

The standard contains performance requirements intended to ensure that if the antenna contacts a power line of 14.5 kV rms or less, it will not transmit a harmful amount of electric current to a person holding the antenna mast.

This standard would be a companion to the Commission's previously issued labeling and instructions rule for communications antennas.

The Commission is also proposing a certification rule that would establish requirements for manufacturers and importers to observe in conducting tests to ensure that their antennas comply with the standard and in issuing

<sup>2</sup> Copies of such advertisements are available for public inspection as documents Y-15 through Y-24 in F.T.C. File No. 215-59. Other promotional materials and advertisements are also available as documents Y-25 through Y-34 in the same file.

<sup>3</sup> 44 FR 50221.



certifications that their products comply with the standard. The certification rule would not be applicable to the proposal to publish the standard as nonmandatory test methods, except that manufacturers who produced antennas that complied with the test methods would be free to certify that their antennas were in compliance.<sup>1</sup>

**DATES:** The standard is proposed to become effective so that it would apply to omnidirectional CB base station antennas manufactured after six months from the date the final standard is issued by the Commission.

The proposed promulgation date is 12:00 noon, Eastern Standard Time, on the date that is 10 days after the final rule is published in the *Federal Register*.

Written data, views, and arguments on the proposal should be submitted by October 13, 1981.

Interested persons will have an opportunity to make an oral presentation of data, views, or arguments on September 22, 1981. Persons wishing to make oral presentations should contact the Office of the Secretary by September 14, 1981.

**ADDRESSES:** Written comments, preferably in five copies, should be submitted to the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207, and titled "CB Base Station Antenna Proceeding."

Opportunity for oral presentation: third floor, 1111 18th Street, N.W., Washington, D.C. 20207.

All material which the Commission has that is relevant to this proceeding, including any comments that may be received on this proposal, may be seen in, or copies obtained from, the Office of the Secretary, 3rd floor, 1111 18th Street, N.W., Washington, D.C., 20207.

**FOR FURTHER INFORMATION CONTACT:** Carl Blechschmidt, Office of Program Management, Consumer Product Safety Commission, Washington, D.C., 20207, phone (301) 492-6557.

#### **SUPPLEMENTARY INFORMATION:**

##### **A. Background**

During the three year period from 1975 through 1977, the peak years for CB antenna sales, the Commission estimates that over 700 persons were electrocuted while putting up or taking down communications antennas and that about 60 percent of these deaths involved omnidirectional CB antennas.<sup>(7)</sup> Since 1976, the industry has experienced a significant decline in

sales of CB antennas<sup>(2)</sup>, resulting in a related decline in electrocutions.<sup>(3)</sup>

About 175 fatalities are estimated to be associated with omnidirectional CB antennas in 1976. The estimated number of fatalities declined to about 125 in 1977 and to about 55 in 1978. Since then, the number of fatalities appears to have leveled off at about 45-50 each year.<sup>(4)</sup> In addition to the 45-50 deaths occurring each year, it is estimated that a somewhat greater number of injuries occur annually; about half of them serious enough to require surgery, amputation, skin grafts, or other major attention.<sup>(5)</sup> It is common for multiple deaths or injuries to occur in a single accident.<sup>(6)</sup>

The Commission's staff has estimated that in both 1979 and 1980 about 20 percent of the accidents involved antennas less than a year old, resulting in about 8 deaths per year associated with relatively new antennas. Although the Commission staff developed a model of death rates based on sales which projected 3 deaths from new antennas for 1979, more recent information indicates that this is probably low and that the number occurring each year may be closer to 8.<sup>(7)</sup>

As a result of the information that it received concerning the deaths and injuries associated with communications antennas, and in response to a petition filed with the Commission by Lawrence H. Chapman on June 29, 1978 (Petition CP 78-19), the Commission took several actions. First, the Commission reasoned that if consumers knew of the danger and how to avoid it, they would be able to take steps to protect themselves. Therefore, the Commission issued a rule (16 CFR Part 1402) requiring manufacturers and importers of (1) outdoor Citizens Band (CB) base station antennas, (2) outdoor television antennas, and (3) antenna supporting structures to provide purchasers with (a) instructions on how to avoid the hazard of contacting electric power lines with the antenna or supporting structure while putting it up or taking it down, (b) labels on the antennas (and provided with the supporting structures), describing the hazard of electrocution and referring the reader to the instructions, and (c) statements on the packaging or parts container, and at the beginning of the instructions, describing this hazard and referring the reader to the instructions. A detailed discussion of the rule and the reasons for issuing it is in the *Federal Register* document that issued the rule (43 FR 28392; June 29, 1978).

In addition, the Commission concluded that, while the labeling rule of Part 1402 is necessary in order to

reduce the deaths that occur due to the contact of television and CB base station antennas with electric power lines, a standard that would help insure that the antenna would not supply a harmful amount of electricity to the installer if the antenna did contact a power line would address the risk of electrocution more effectively than labels and instructions alone and thereby cause a greater reduction in deaths and injuries. 44 FR 38854; July 3, 1979.

Consequently, the Commission initiated a study to determine the feasibility of a safety standard for CB antennas. The study examined many methods for addressing the electrocution hazard and concluded that a standard was feasible and that external insulation of the antennas was the most promising approach for providing protection.<sup>(8)</sup>

After considering the available information, the Commission preliminarily determined that a consumer product safety standard was necessary to eliminate or reduce an unreasonable risk associated with CB base station antennas. While the Commission was aware of the risk associated with all CB base station antennas, it was also aware that standards for directional and omnidirectional antennas presented different technical problems. The directional antennas are generally heavier and more complex than the omnidirectional type due to the array of elements required to produce its directional characteristics. The Commission believed that a standard applicable only to omnidirectional CB base station antennas could be developed more quickly than a standard that would be applicable to both directional and omnidirectional antennas. Furthermore, the Commission was aware that omnidirectional CB base station antennas are used more often than the directional type. Therefore, the scope of the standard development proceeding was limited to omnidirectional antennas. 44 FR 53677; September 14, 1979.

Under section 7 of the Consumer Product Safety Act, 15 U.S.C. 2056, a proposed consumer product safety standard may generally be developed in the following ways:

1. The Commission may solicit offers from persons or organizations outside the Commission to develop a recommended standard. Persons submitting such offers are referred to as "offerors," and the development of recommended standards in this manner is called the "offeror process."

<sup>1</sup> Commissioners R. David Pittle, Edith Barkadale Sloan, and Stuart Stalter voted for the proposals. Commissioner Samuel Zagoria voted against the proposals, and Chairman Nancy Harvey Steorts abstained.



2. The Commission may invite persons or organizations outside the Commission to submit to the Commission an existing standard which could be proposed as a consumer product safety standard.

3. The Commission may publish an existing standard or combination of existing standards as a proposed consumer product safety standard.

4. The Commission may develop the proposed standard itself if the Commission determines that it is "more expeditious" than development by the offeror process.

In determining whether a standard should be developed by the Commission itself rather than through the offeror process, the Commission is required by section 7(b)(2) of the Consumer Product Safety Act to consider the following factors.

1. The nature of the risk associated with the product.

2. The expertise of the Commission with respect to the risk of injury.

3. The expertise of the Commission in developing consumer product safety standards.

4. The resources available to the Commission and the priorities established by the Commission.

After considering these factors, the Commission determined that it would be more expeditious for the Commission to develop this standard itself than for interested parties outside the Commission to develop the standard. In the Federal Register of July 3, 1979 (44 FR 38854), the Commission published a notice announcing its determination to develop the standard itself and requesting public comment on the determination.

After evaluating these comments, the Commission published a Notice of Proceeding in the Federal Register to formally commence the development proceeding (44 FR 53678; September 14, 1979). The Commission also solicited participation in the standard development proceeding by interested persons outside the Commission and contributed to the costs of some of the persons who participated. The persons outside the Commission participated by attending a series of 4 public meetings, by attending some open staff development meetings, by performing some individual task assignments, and by submitting comments by mail or phone throughout the proceeding, and especially on the final draft of the standard which the staff recommended to the Commission.

In order to allow time for comment by other agencies concerned with communications antennas, the Commission extended the development

period until July 31, 1982 (46 FR 31901; June 18, 1981).

#### B. The Proposed Standard

The standard that is proposed below is intended to reduce the unreasonable risks of electric shock injuries and deaths that the Consumer Product Safety Commission has preliminarily determined are associated with omnidirectional CB base station antennas.

The standard itself is Subpart A of the regulation (16 CFR Part 1204) proposed below. Subpart B consists of proposed regulations to establish requirements that manufacturers and importers must follow to certify that their products comply with the standard, as required by section 14(a) of the act. Subpart B describes the minimum features of a "reasonable testing program" for determining that the products meet the standard and includes requirements for recordkeeping. A general explanation of the standard's requirements is given below, followed by a discussion of the rationale for particular requirements.

##### General description of the standard.

The standard is intended to reduce the risk of electrocution or serious injuries occurring if an omnidirectional CB base station antenna contacts an electric power line while the antenna is being put up or taken down. Under the standard, a manufacturer could accomplish this in one of two ways. It could insulate the antenna so that if it contacts the power line, there is less of a chance that a harmful electric current will be transmitted from the power line through the antenna to the person holding the antenna mast. Or, a manufacturer could incorporate an insulating barrier between the antenna and the mast or other supporting structure, so that a harmful electric current will not pass from the antenna to a person in contact with the mast. (If this alternative were chosen, the feed cable from the antenna would have to be insulated or otherwise protected so that it would not provide an electrical path to the mast or a person touching the cable.)

The standard specifies two performance tests to determine if the means chosen by the manufacturer to protect against the shock hazard will provide adequate protection (§ 1204.3(c)).

First, there is an Insulating Material Effectiveness Test (§ 1204.4(d)) in which a high voltage electrode or test rod is brought into contact with the antenna at any point within the protection zone established by § 1204.2(k) (above 12 inches above the top of the mast) to ensure that the insulation can withstand

the voltage for 5 minutes without transmitting more than 5 milliamperes (mA) root-mean-square (rms) of electrical current.

The other test is an Antenna-Mast System Test (§ 1204.4(e)) ("Antenna Drop Test") which is intended to determine if the means provided to protect against electrocution will withstand the stress imposed when an antenna-mast system falls onto a power line. This test consists of mounting the antenna to be tested on a specified mast and allowing the assembled antenna and mast to fall onto a power line of 14,500 volts rms phase to ground. The antenna passes the test if it does not transmit more than 5 mA rms of electrical current. If the mast does not slide off the power line in the course of the fall, it must be able to maintain this level of protection for a period of 5 minutes.

If the ability of an antenna to pass these tests is dependent on the degree of insulation or other property of the feed cable attached to the antenna, the manufacturer is required to supply 50 feet of the cable with the antenna (§ 1204.3(c)).

Section 1204.6 requires manufacturers to include a statement in the instructions warning users to keep away from overhead wires and, if the antenna nears any overhead wires, to immediately let go, stay away, and call the utility company. The reason for this requirement is that the standard will not protect in every instance against electrocution caused by contact with power lines. In the first place, the standard is intended to provide protection for power line voltages of up to 14,500 Volts (14.5 kV). Some power lines are operated at higher voltages than this. In addition, not all portions of the antenna are required to be insulated, and the antenna's mast is not required to be insulated. If the power lines were to contact one of these uninsulated areas, an electrocution could occur. Furthermore, the antenna could have been manufactured in violation of the standard or the insulation could have deteriorated or been damaged since the antenna was manufactured. In addition, the insulation cannot withstand high voltages indefinitely, and, after a period of time where the antenna is in contact with a power line, the current may penetrate the insulation. Therefore, even if the insulation initially protects against a harmful amount of current, the user should not attempt to remove an antenna that falls into electric power lines, since the insulation could break down while the antenna is being removed. For these reasons, persons



handling these antennas should ensure that the antennas are kept away from power lines so that the antennas cannot contact the line while being transported, installed, or removed, even if an antenna is dropped. (The Commission recommends that antennas be located at least 2 times the combined length of the antenna and mast from the nearest power line.)

Since many of the accidents associated with these antennas occur when the antennas are being taken down after outdoor exposure for a number of years, the Commission considered issuing requirements that the materials used to provide protection be weather resistant. However, the test methods that are currently used to provide an accelerated determination of weather resistance are controversial and complex. In addition, there is no reason to believe that manufacturers will not request that their suppliers provide them with weather resistant materials. Therefore, the Commission has not included mandatory weatherability requirements in the rule but has included a statement that the materials should be weather resistant and has stated some criteria that manufacturers can use to help them select weather resistant materials.

### C. Rationale for Provisions of Proposal

The following is a discussion of the rationale for particular provisions of the standard. A more detailed discussion of the rationale can be found in the Commission document "Rationale Supporting Proposed Safety Standard for CB Base Station Omnidirectional Antennas", dated February 26, 1981 (E-48).

#### Product definition.

For the purposes of the standard, "omnidirectional CB base station antenna" means an antenna designed to be used with a transmitter and/or receiver operating in a fixed location in whatever frequency band is allocated for citizen's radio service (presently 26.96-27.41 megahertz (MHz)), where the antenna exhibits approximately equal signal transmission or reception capabilities in all horizontal directions simultaneously (§ 1204.2 (a), (c), (d), and (j)).

The requirements in the proposal apply to omnidirectional CB base station antennas that are "consumer products." (§ 1204.1(c)). Section 3(a)(1) of the Consumer Product Safety Act ("the act" or "CPSA"), 15 U.S.C. 2052(a)(1), defines the term "consumer product" as an "article, or component part thereof, produced or distributed (i) for sale to a consumer for use in or around a permanent or temporary

household or residence, a school, in recreation, or otherwise, or (ii) for the personal use, consumption or enjoyment of a consumer in or around a permanent or temporary household or residence, a school, in recreation, or otherwise." The term does not include products that are not customarily produced or does not include products that are not customarily produced or distributed for sale to, or for the use or consumption by, or enjoyment of, a consumer. A limited exception from the coverage of the standard is provided by section 18(a) of the CPSA, 15 U.S.C. 2067(a), for certain products intended for export and meeting the requirements of section 18(b) of the CPSA.

#### Allowable current and current monitoring device.

The proposed standard requires that the electric current through the antenna-mast system, when tested according to the standard, may not exceed that which produces a 5 mA rms reading on the current monitoring device shown in Fig. 1. This level was selected on the basis of studies that indicate that more than 99.5 percent of the adult population is able to let go of an object that is energized at a current level of 6 mA rms at 60 Hz. Thus, at 60 Hz, 5 mA is below the "can't let go" level that would freeze a person to an energized object and is also below the level of current that would interfere with normal operation of the heart.(9)

During experimental testing of prototype insulated antennas, it was found that corona effects during high voltage tests caused higher frequency transient currents, in addition to the 60 Hz current directly caused by the applied voltage. When testing at nearly the specified test voltage (14.4 kV rms), these fast transient currents were measured as occurring at a rate of approximately 9 kHz. The Commission conducted a literature search to determine what hazards might be posed by these high frequency currents. Little data were found, but comparison of these currents with transient currents commonly used in human electrosurgery led to the conclusion that these corona currents posed very little, if any, risk of electrocution or shock.

After evaluating experimental data on skin burns at various currents, the Commission staff concluded that a current of 10 mA would be safe from a burn standpoint, considering the area of skin contact that would be likely when consumers contacted an antenna mast. Thus, a general maximum of 10 mA is needed to protect against burns, while at low frequencies such as 60 Hz, no more than 5 mA should be allowed in order to protect against electrocution.

Accordingly, the current measuring device shown in Fig. 1 incorporates a frequency-responsive bypass circuit that has the effect of routing up to half of the high frequency component of the current around the meter. A meter reading of 5 mA, therefore, would allow up to 10 mA of high frequency current in the absence of any low frequency current, but would limit the more dangerous low frequency current to 5 mA.

#### Power line voltage.

The Commission staff found that 98 percent of the accidents(10) involving contact between omnidirectional CB base station antennas and power lines, and 95 percent of the total mileage of distribution circuits(11), involved voltages under 14.5 kV rms phase-to-ground. In view of the technical difficulty and increased cost involved in protecting against higher voltages(12), 14.5 kV was chosen as the test voltage.

#### Point of antenna contact (protection zone).

In seventy-five percent of these accidents, contact occurred within the top 5 feet, in about 85 percent within the top 8 feet.(13) The protection zone (the area of the antenna from the tip of the antenna to a point 12 inches above the top of the mast) addresses the contact area for 95 percent of the accidents investigated, while excluding the difficult to protect area near the mast that may contain hardware for connecting the antenna and the mast.(14)

#### Contact time (§ 1204.4(d)(3), 1204.4(e)(3)).

The proposed standard requires contact with the test voltage source for five minutes. Research performed for the Commission during the development of the standard indicates that the insulating materials evaluated either failed in less than 5 minutes or withstood the applied voltage for a substantially longer period.(15) Five minutes is technologically feasible and sufficient for the installer to perceive the hazard and get away from the antenna.

#### Interpretation of results. (§ 1204.5(f)).

The proposed standard states that an antenna system shall pass the test specified if no electrical breakdown occurs and if no current reading exceeds 5 mA rms during the test. The Commission believes it is important that the test criteria identify both modes of failure. Electrical breakdown is the usual mode of failure, but due to the suddenness of this breakdown and the large currents involved, it is not practical to define breakdown in terms of observed current flow. However, laboratory tests have identified another form of failure, in which the current



exceeded 5 mA without breakdown occurring.(16)

#### *Field joint protection.*

The proposed standard requires that protective components which must be put in place by the person assembling the antenna must be integral with, or not readily removable from, at least one part of the antenna. The Commission recognizes that, because of shipping restrictions, there will have to be at least one field joint in the longer antennas. For structural purposes, this joint will most likely be metal and therefore, without a protective component, may cause a shock hazard if it contacts a power line in the accident scenarios described above. The purpose of the field joint protection requirement is to assure that the protective accessory for the joint cannot be readily misplaced or knowingly discarded by the person assembling the joint in the field.

#### *Feed cable.*

The proposed standard requires that the manufacturer supply 50 feet of feed cable with the antenna when compliance material or other properties of the cable by the person assembling the joint in the field.

Since currently available feed cable may not provide sufficient insulation, (17) the cable must therefore be provided by the manufacturer as an antenna system component. Even if adequate feed cable with the antenna would also reduce the possibility of the consumer installing a cable which does not satisfy the requirements.

The cable length requirement assures that the manufacturer supplies cable that will reach from the antenna connection point to a location near the bottom of the mast. Federal Communications Commission regulations specify 60 feet as the maximum antenna-mast system height. The 50 foot cable requirement is based on this maximum system height and a minimum antenna length of 9 feet. Under these extreme conditions, the cable connection point of the erected system would be one foot from the bottom end of the mast and easily accessible to the installer. A shorter length could require the consumer to add another length of cable, before the antenna is erected, that would not provide sufficient protection.

In addition, the performance tests of the standard require that a feed cable (either supplied by the manufacturer or a typical RG-213 cable) be secured to the side of the mast, as by taping. This provides a means for determining that if the feed cable becomes energized during the test, its insulation is sufficient to provide the required protection. The side of the end of the feed cable is also required to be taped to the mast to

ensure that the end of the cable is adequately insulated.

In the Antenna Drop Test, the taping requirement serves to detect another possible source of dangerous current. When a long length of the conductive feed cable core is separated from the conductive mast only by the cable insulation, these elements in effect create a capacitive coupling effect that can induce harmful amounts of current through the mast.(18) The lack of a feasible means to avoid this capacitive coupling effect severely limits the potential of the isolation technique as a way to comply with the standard.

The capacitive coupling effect could be avoided by mounting the cable on standoffs that will keep the cable sufficiently separated from the mast that the induced current will be less than 5 mA. However, installing these standoffs would involve considerable effort on the part of the installer, and would also result in an awkward and unattractive appearance to the antenna installation. For these reasons, the Commission believes that the protection of the standard would be nullified if the use of standoffs were permitted during the performance tests of the standard, since installers would either remove the standoffs or, if this were not feasible, purchase a different cable to replace the one supplied by the manufacturer. Therefore, the standard requires that the cable be taped to the mast to simulate the way the cable would actually be installed, which would typically be by securing the cable to the mast or running the cable inside the mast.

#### *Ambient temperature.*

The proposed standard states that the performance tests may be performed at any temperature from 32°F (0°C) to 104°F (40°C). This temperature range represents the environment in which antenna installation, adjustment, or removal would most likely occur. Over this temperature range, the requirements of the standard may be satisfied without an elaborate design or expensive materials. Environmental testing during the standard's development indicates that materials that will pass at any point within the specified range should be suitable for any other temperature within the range.(19)

#### *Ambient relative humidity.*

The proposed standard states that the performance tests may be performed at any point over the range of relative humidity from 10 to 90 percent. This range represents atmospheric conditions in which antenna installation, adjustment or removal would most likely occur. Testing associated with the standard indicates protection can be provided over this range of relative

humidity without an elaborated design or expensive materials. Further, testing indicates insignificant effects resulting from various combinations of the relative humidity and temperature extremes.(20)

#### *Types of tests.*

As explained above, the proposed standard includes two tests, the Insulating Material Effectiveness Test and the Antenna-Mast System Test (Antenna Drop Test).

The Insulating Material Effectiveness Test provides a means of evaluating the protection zone of the antenna under static conditions. The test allows a relatively simple examination and verification of any location within the protection zone to ensure compliance with the requirements of the standard. With the flexibility provided by this test, the Commission and manufacturers could make a large number of tests to identify faults in the basic design or in the material within the protection zone without incurring the substantially greater costs that would be associated with repeated Antenna Drop Tests.

The Antenna-Mast System Test allows evaluation of the protection provided by the antenna system when attached to a mast and subjected to realistic accident conditions. In this test, the dynamic conditions created by dropping an antenna system onto a 14.5 kV power line are used to appraise the ability of the antenna-mast system to withstand the effects of impact, abrasion, and contact time.

*a. Insulating Material Effectiveness Test.* The purpose of this test is to evaluate the adequacy of the means used to protect against the effects of electrical contact in the protection zone. This is accomplished by applying a 14.5 kV test rod to various points within the protection zone and monitoring the resulting current flow.

The accident data reveal that most victims were in contact with the mast at the time of the incident.(21) Therefore, current flow is monitored through a short length of mast fastened to the antenna in accordance with manufacturers' instructions. Current flow through the antenna to the mast is monitored as the test voltage is increased from 0 to 14.5 kV at a minimum rate of 2 kV per second. At 14.5 kV, the test voltage is held for a period of 5.0 minutes.

By being allowed to gradually increase the test voltage, the tester can obtain information on the voltage level at which failure occurs. Voltage level at failure is an important factor in performing a failure analysis.



The procedure also requires maintaining the 14.5 kV test voltage for a period of up to 5.0 minutes. The proposed Insulating Material Effectiveness Test describes a high voltage electrode or test probe as an aluminum rod approximately 1/4 inch in diameter. The diameter of the probe simulates a 14.5 kV power line cable.

**b. Antenna-Mast System Test (Antenna Drop Test).** The Antenna-Mast System Test procedure is designed to simulate an accident scenario in which an antenna falls from an almost vertical position onto a 14.5 kV power line. In such a scenario, the antenna-mast system length is a significant factor in the force with which the antenna will impact the power line.

The procedure requires that the test be performed with an antenna-mast system 42 feet in length. The system length was derived from the accident reports available to the Commission. The accident data indicated that the most frequently reported antenna length was 17 feet and that 75 percent of the accidents involved antenna lengths between 17 and 24 feet.(22) The most frequently reported mast lengths range from 16 to 25 feet.(23) As a result, the typical antenna-mast system to be used in the test was defined as 42 feet long. By specifying a system length (antenna plus mast) rather than a mast length, the procedure provides a standardized test geometry.

The antenna-mast length of 42 feet does not represent a worst case condition, which would be difficult for antennas to pass without extensive changes in the ways that antennas are presently constructed. However, this length should provide a reasonable degree of protection due to the large number of incidents that have occurred with antenna-mast combinations that do not exceed this length. In addition, even for combinations that do exceed this length, considerable protection will be afforded, since many incidents involving power line contact do not involve an unimpeded fall into the power line. The antenna may contact the line while the antenna is being put up, or the attempts of the installers to hold up the unbalanced antenna will reduce the velocity of the fall compared to the velocity that would be attained in the test.(24) Thus, 42 feet was selected as providing an excellent degree of protection without imposing excessive costs on manufacturers to comply with a "worst possible case" standard. A tolerance of  $\pm 3$  inches on the antenna-mast length is specified since this will make the test easier to perform and

should not materially affect the results of the tests.

In the Antenna Drop Test, as in actual accidents, after initial impact with the power line, the antenna either "hangs up" and comes to rest on the power line or it slides down and off the power line. The procedure requires that the antenna be able to pass the test under both conditions. Under conditions where the antenna comes to rest on the power line, the line will remain energized for 5.0 minutes or until failure, whichever comes first. Also, previous testing has shown that the abrasion caused by the antenna sliding across the power line, is frequently sufficient to cause weaknesses and initiate failure.(25)

The proposed standard describes a high voltage test facility which CPSC will utilize for the Antenna Drop Test. The facility consists of a single power line supported by two poles 95 to 105 feet apart. Although up to a 200 foot pole spacing is more typical in residential areas according to the utility companies the Commission has surveyed, the 100 foot spacing was chosen as more practical for testing purposes. The power companies indicated that this was a reasonable decision, particularly since such spacings do exist and represent a more severe test due to less swing during impact.(26)

The proposed standard specifies that cable sag shall be limited to from 9 to 12 inches. Typical cable sag curves provided by the utility companies indicate sags from 3 to 12 inches, depending on temperature, for typical cables at 100 foot spans.(27) Therefore, the specified 9 to 12 inch sag represents a typical condition, and it also constitutes a range that is wide enough to be achievable under test conditions, yet small enough to have no significant effect on test results.

Typical power lines in 14.5 kV systems are aluminum cables, with or without a steel core strand. Under repeated impacts, such as in a test facility, the aluminum would both deform at the point of impact and tend to stretch as it absorbs the tensile forces involved. To provide durability and to help ensure repeatability, a steel cable was chosen for the test facility. It is galvanized to minimize the effects of weather and has a diameter and number of wire strands similar to typical power line cables.(28)

The proposed standard requires the low point of the cable to be between 28 and 29 feet above a horizontal plane through the pivot axis of the falling antenna-mast system. This dimension is the result of analysis of the accident data available to the Commission which

indicates a mean power line height of 28.7 feet.(29)

The use of a pivot at the base of the antenna-mast system as shown in Figs. 2 and 3 provides a controlled fall of the system and a repeatable test condition regardless of the configuration of the antenna-mast systems. In order to provide repeatable results, the pivot should not allow a significant degree of movement of the antenna-mast system in the lengthwise direction of the power line.

#### *Prohibited acts.*

It is unlawful to manufacture for sale, offer for sale, distribute in commerce, or import into the United States any product subject to this standard that does not conform with the standard.

#### *Effective date.(30)*

After considering various effective dates, the Commission proposes that the standard become effective 6 months after issuance of the final standard. This period was chosen in order to minimize the overall economic burden of the standard and certification rule on manufacturers, while at the same time having the benefits of the standard available to the public in the reasonably near future.

The effective date chosen for the standard and certification rule may have a significant impact on the degree of disruption of manufacturing and commercial practices caused by the imposition of these rules. A relatively short effective date may not allow producers to clear component inventories and make design and production changes necessary to achieve compliance, and the result could be potentially greater short-run inventory sales and losses and a temporary shortage of complying products on the market.

Though sales of CB radios and antennas are generally somewhat greater in the spring and summer, production appears to be fairly constant throughout the year for most firms. New products are typically announced at the Summer and Winter Consumer Electronics Shows, which are held in June and December, respectively. Specific economic concerns in choosing an effective date for this standard and certification rule involve: the availability of suitable insulation materials; the ability of manufacturers to make design and production changes in their own facilities; the ability of firms to develop testing facilities and to conduct preliminary qualification tests of materials and products; and manufacturers' ability to clear inventories of non-complying components.



Some small manufacturers may choose to purchase components from other larger firms in order to market complying antennas. The acquisition of such components, or the development of new components, may take several months for some small firms.

At least one major manufacturer believes that no design or basic production changes to its products will be needed. This firm reports that approximately one to two months might be needed to design and purchase any new certification labels that would be required (presumably adhesive labels affixed to the bottom sections of the firm's two-piece antennas or new shipping tubes bearing the appropriate certification markings). Other firms have reported that some, but not all, of the products they intend to bring into compliance could be ready in about two months.

For most firms, it is highly unlikely that full compliance can be achieved in only two months. Production and labeling changes are likely to take 4 to 8 months to accomplish, depending on the insulating materials chosen and the production processes necessary to incorporate those materials. This assumes that no significant changes to antennas already redesigned prior to promulgation of the standard are needed. Some smaller manufacturers would probably purchase components or technology developed by other firms. Since these manufacturers would probably want to use components or technology that have already been demonstrated to meet the standard, a somewhat longer period of time may be needed for these smaller manufacturers to get complying products on the market.

An effective date of 90 days or less from the date of publication of the final rule in the *Federal Register* would likely minimize the number of non-complying antennas produced after the promulgation date, but would probably result in the greatest adverse impact on small manufacturers, since most small firms probably could not develop complying products by that time.

For most firms (small or large), an effective date of six months from the date of publication of the final rule in the *Federal Register* would probably minimize the overall economic burden associated with the rule. This would allow most firms intending to market complying antennas, including those small firms intending to remain in the market, to develop or buy the necessary components, materials, and testing capability.

An effective date of one year from the date of publication of the final rule in the *Federal Register* would probably not

significantly further reduce the impact of the rule on small manufacturers. However, the level of safety provided by products on the market might be adversely affected since non-complying, relatively more hazardous products could be available to consumers for a longer period of time.

#### *Stockpiling.*

Section 9(d) of the CPSA states that consumer product safety standards shall be applicable only to consumer products manufactured after the effective date of the standard. In order to prevent a manufacturer from circumventing the purpose of the standard, section 9(d) authorizes the Commission to issue a rule prohibiting stockpiling of the product covered by the consumer product safety standard. "Stockpiling" is defined as the manufacturing or importing of the product, between the issuance of the standard and its effective date, at a rate that is significantly greater than the rate at which the product was produced during a base period prescribed in the stockpiling rule.

In the case of CB antennas, the Commission has decided not to propose a stockpiling rule. The Commission believes that, for most firms intending to remain in the market, the expected cost of complying with the recommended standard would be less than the overall cost of producing and storing more non-complying products.<sup>(31)</sup> The Commission therefore concludes that an anti-stockpiling rule for the standard is not necessary.

#### **D. Certification Rule**

Section 14(a) of the act requires manufacturers, private labelers, or importers of products that are subject to a consumer product safety standard and that are distributed in commerce to issue a certificate of compliance with the applicable standard. The certificate of compliance must be based on a test of each product or upon a reasonable testing program. Subpart B establishes requirements that manufacturers and importers must follow to certify that their products comply with the standard. Private labelers of CB antennas subject to the standard need not issue a certificate of compliance when a certificate has been issued by the manufacturer or importer of the antennas. The certificate is required to accompany the product or otherwise be furnished to any distributor or retailer to whom the product is delivered by the manufacturer or importer.

If the testing required by Subpart B has been performed by or for the foreign manufacturer of a product, the importer may rely on such tests to support the

certificate of compliance if the importer is a resident of the United States, or has a resident agent in the U.S., and the required records are maintained in the U.S. The importer is responsible for ensuring that the foreign manufacturer's records show that all testing used to support the certificate of compliance has been performed properly with passing or acceptable results and that the records provide a reasonable assurance that all antennas imported comply with the standard.

The certificate of compliance shall state:

(1) That the product "complies with all applicable consumer product safety standards (16 CFR Part 1204)";

(2) The name and address of the manufacturer or importer issuing the certificate, and

(3) The date of manufacture and, if different from the address in paragraph (2), the place of manufacture.

A "reasonable testing program" for any particular model of antennas is one which demonstrates with a high degree of assurance that all antennas of that model will meet all requirements of the standard. Manufacturers and importers shall determine the types and frequency of testing for their own reasonable testing programs. A reasonable testing program which does not test each item produced should be sufficiently stringent that any variations in production, etc., over the production interval would not cause any antenna to fail if tested according to the requirements of the standard.

All reasonable testing programs shall include qualification tests, which must be performed on one or more samples of the CB antennas representative of each model produced, or to be produced, to demonstrate that the product is capable of passing the tests prescribed by the standard. A reasonable testing program shall also include production tests, which must be performed during appropriate production intervals as long as the product is being manufactured.

Corrective action and/or additional testing must be performed whenever certification tests of samples of the product give results that do not provide a high degree of assurance that all antennas manufactured during the applicable production interval will pass the tests of the standard.

At the option of the manufacturer or importer, some or all of the testing of each item or of the reasonable testing program may be performed by a commercial testing laboratory or other third party. However, the manufacturer or importer is responsible for ensuring that all certification testing has been



properly performed with passing or acceptable results and for maintaining the required records of such tests.

Before any manufacturer or importer of CB antennas, which are subject to the standard, manufactures such antennas for sale or distributes them in commerce, the qualification tests shall be performed on one or more samples of each model. The type of tests and the manner of selecting samples shall be determined by the manufacturer or importer so as to provide a reasonable assurance that all antennas subject to the standard will comply with the standard. Any or all of the qualification testing may be performed before the effective date of the standard.

If any changes are made to a product, after initial qualification testing, that could affect the ability of the product to meet the requirements of the standard, additional qualification tests must be made before the changed antennas are manufactured for sale or distributed in commerce.

Manufacturers and importers shall test antennas subject to the standard periodically as they are manufactured, to demonstrate that the antennas meet the requirements of the standard.

If any test yields results which do not indicate that all antennas manufactured during the production interval will meet the standard, production must cease and the faulty manufacturing processes must be corrected before more antennas are manufactured. Corrective action may include changes in the manufacturing and/or assembly process, equipment adjustment, repair or replacement, or other action deemed appropriate by the manufacturer or importer to achieve passing production test results. In addition, the remaining products from which the samples were taken may not be distributed in commerce unless they meet the standard. It may be necessary to modify the antennas or perform additional tests to ensure that only complying antennas are distributed in commerce. Antennas which are subject to the standard and do not comply with the requirements of the standard cannot be offered for sale, distributed in commerce, or imported into the United States.

Each manufacturer or importer of CB antennas subject to the standard shall maintain the following records, which shall be available to any designated officer or employee of the Commission in accordance with section 16(b) of the Consumer Product Safety Act (15 U.S.C. 2065 (b)):

(a) Records of the qualification and production testing required by Subpart B, including a description of the types of tests conducted, the dates and results of

the tests, and the production interval selected for the performance of the production testing.

(b) Records of all corrective actions taken, including the specific action taken, the date the action was taken, the test failure which necessitated the action, and the specific action taken to correct any noncomplying antenna produced during the period and to improve the manufacturing process.

These records shall be kept for 3 years.

#### E. Other Considerations

##### Findings

Section 9(c) of the act requires that prior to promulgating a consumer product safety rule the Commission shall consider and make appropriate findings as to:

(1) The degree and nature of the risk of injury the rule is designed to eliminate or reduce;

(2) The approximate number of consumer products, or types or classes thereof, subject to such rule;

(3) The need of the public for the consumer products subject to such rule, and the probable effect of such rule upon the utility, cost, or availability of such products to meet such need;

(4) Any means of achieving the effect of the rule while minimizing adverse effects on competition or disruption or dislocation of manufacturing and other commercial practices consistent with the public health and safety;

(5) That the rule (including its effective date) is reasonably necessary to eliminate or reduce an unreasonable risk of injury associated with the product, and

(6) That promulgation of the rule is in the public interest (15 U.S.C. 2058 (b) and (c)).

The Commission must also include these findings in the final standard.

Section 9(b) of the act (15 U.S.C. 2058(b)) requires that in promulgating a consumer product safety rule, the Commission shall also consider and take into account the special needs of elderly and handicapped persons to determine the extent to which such persons may be adversely affected by the rule.

In addition, the Regulatory Flexibility Act, 5 U.S.C. 601-612, requires that agencies make initial and final regulatory flexibility analyses of the effect of rules on small businesses, small governments, and other small entities. These analyses shall also consider alternatives to the rules which could minimize any significant economic impact of the rules on small entities. The Commission's initial regulatory

flexibility analysis is discussed later in this notice.

The Commission welcomes comments from interested parties relating to all aspects of the subject matter of these findings. The Commission's preliminary conclusions concerning these findings are discussed in the draft economic impact analysis summarized below and are contained in draft findings included in the proposed rule.

##### Economic analysis

As required by section 9(c) of the act (15 U.S.C. 2058(c)), the Commission has taken into account in its consideration of the proposed standard the need of the public for omnidirectional CB base station antennas and the probable effects of the standard upon the utility, cost, and availability of the product to meet such need. These are among the factors the Commission weighed in estimating the economic impact of the proposed standard. The Commission's economic impact analysis of the proposal is available for inspection or copying in the Office of the Secretary. (32) The Commission welcomes comments on the analysis and on the possible economic effects of the proposed standard. The following is a brief discussion of the highlights of the draft economic analysis.

The Commission's staff estimates that approximately 75,000 new omnidirectional CB base station antennas were sold in 1980. This represents only a small percentage of the sales in 1976 (the peak year for sales), when 1.3 million units were sold. Sales are not expected to exceed 100,000 per year in the foreseeable future. There are probably up to five million omnidirectional CB base station antennas in use by consumers today. Five major manufacturers account for between 90 and 95 percent of unit sales. The other producers, some 12 to 15 firms, together account for a very small percentage of unit sales.

The draft standard would lead to an increase in the average cost of producing antennas of up to 20 percent, and the annual cost to the industry may be up to about \$300,000. The draft certification rule could add up to \$75,000 to this annual cost. The price of a typical antenna, which retails for about \$50, may rise to about \$60; the price of some antennas may rise by nearly 50 percent. The effect of the draft standard on annual retail expenditures may be to increase them by up to about \$1 million. The overall availability of omnidirectional CB base station antennas to consumers is unlikely to be significantly affected.



On the other hand, it is estimated that approximately 8 deaths, and at least an equal number of injuries, could be prevented by the draft standard in the first year of compliance. These deaths and injuries account for some 20 percent of all deaths and injuries associated with CB omnidirectional base station antennas. The standard is expected to be over 90% effective. If 8 deaths were averted, and the cost of the standard to consumers were about \$1 million, then the standard would cost about \$125,000 per life saved. The cost per life saved would be greater if fewer deaths were prevented in the first year.

As noted above, in addition to preventing about 8 deaths, the draft standard could prevent 8 or more injuries in the first year of compliance. Using a conservative range of average costs from the Commission's Injury Cost Model (excluding cost components for pain and suffering and long-term disability), the estimated injury reduction savings costs which includes less readily quantifiable components for pain and suffering and long-term disability, first-year injury reduction benefits could be \$288,000 to \$1,680,000.

As new, complying antennas gradually replace old, noncomplying ones, the effectiveness of the standard at reducing the overall risk associated with CB omnidirectional antennas would tend to increase. Since these antennas may be removed and re-installed a number of times over a period of years, compliance with the standard would decrease the risk associated with these activities.

As a result of the standard, sales of these products would probably become more concentrated among the major manufacturers, one of which already produces antennas it believes will comply. Several firms, particularly certain small manufacturers, may leave the omnidirectional CB base station antenna market, at least temporarily. Others may choose to produce antennas primarily for export; some firms are already sending substantial portions of their production to foreign countries.

The Commission does not believe that elderly or handicapped persons will be affected by the standard in ways that differ significantly from those applicable to the general population.

There should be little change in the performance of antennas due to the use of insulation. However, the average useful life of these antennas may be increased somewhat.

#### *Evaluation of the Impact of the Communications Antenna Labeling Rule*

In 1979, the Commission contracted for an evaluation of the impact of the

labeling rule for CB base station and television antennas which became effective September 26, 1978. The contractor surveyed consumers who had purchased CB base station antennas and outdoor TV antenna components before and after the effective date of the labeling rule. Among the major findings of the study(33) were:

1. Only 4 percent of the respondents from outdoor TV antenna households and 8 percent of the respondents from the CB base station households reported feeling concerned about having a serious electrical shock accident during a recent installation experience.

2. Only about 10 percent of all respondents know that electric powerlines frequently are not insulated.

3. Respondents who installed antennas after the implementation of the labeling rule were significantly more likely than their counterparts to report seeing instructions on how to avoid the electrocution hazard.

4. Most respondents were not willing to pay more than five to ten additional dollars for an antenna that would guard against accidental electrical shock should contact be made with power lines.

5. The survey indicated that over 60 percent of the respondents reported that the warnings had caused them to consider the proximity of nearby powerlines when selecting an installation site. Further evidence indicates that outdoor TV and CB base station antennas installed after the effective date of the labeling rule are significantly farther away from nearby powerlines than antennas installed previously.(34)

From these data, and accident reports, (35) the Commission staff concluded that, while people seem to know that serious injury can result from contacting power lines, they do not always consider it a threat when installing antennas. During installation, accidents occurred when the installers would misjudge the distance between the antenna and the power line, were not aware of the power line due to obstruction by trees, or lost control of the antenna because it was too heavy.

Since the new antennas sold in 1979 and 1980 presumably had the labels and instructions required by the labeling rule, any decrease in death rates with new antennas resulting from the labeling rule has already taken place, even though it is not distinguishable as a specific portion of the overall decline in fatalities. Therefore, a further reduction, due to labeling, in death rates with new antennas would not be expected in the future.

#### *Other Standards*

Until October, 1980, an ad hoc group comprised of representatives of the industry and of the Electronic Industries Association was in existence for the purpose of developing a voluntary safety standard for these antennas.

At that time, however, the industry members voted to terminate development of the voluntary standard for omnidirectional antennas. They reasoned that publication of the final report on the Commission research in support of standard development constituted a "de facto" standard which would preempt other standard development.

In the case of the electrocution hazard associated with CB base station antennas, the Commission is not aware of any standard issued, adopted, or proposed by any Federal department or agency or by any other qualified agency, organization, or institution that would adequately reduce the risk and could be published as a proposed standard by the Commission.

#### *Directional Antennas*

During the development of the proposed standard for omnidirectional CB base station antennas, the Commission staff also investigated the feasibility of including directional antennas under the provisions of the standard.

In its final report to the Commission on "Research and Technical Services for Safety Standard Development for CB Base Station Antennas" Tasks I-V, Syscon, Inc., concluded "insulation of directional CB antennas is a possible way to protect consumers; however, the considerable increase in cost may not be acceptable. Therefore, the project team does not consider it to be practical to include directional CB antennas in the proposed standard." Commission staff responsible for developing the standard concurred with the contractor's findings.

#### *Effect on Small Entities (Initial Regulatory Flexibility Analysis)*

The Commission's staff has prepared an Initial Regulatory Flexibility Analysis, as required by the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. (Pub. L. 96-354), since the proposed rule, if promulgated, may have a significant effect on a substantial number of small businesses. The analysis explains the reasons for the proposal and the objectives and legal basis for it and describes the small entities to which the proposed rule will apply, the impact of the proposed rule on small businesses, and the alternatives to the proposal that were considered during the development



of the proposal in efforts to minimize the adverse economic impact of the rule on small entities.

For the CB antenna industry, the Commission concluded that firms with fewer than 750 employees should be considered small businesses. By this criterion, 12 to 15 of the approximately 20 domestic CB omnidirectional antenna manufacturers would be considered small. Other manufacturers which have fewer than 750 employees but are subsidiaries or divisions of larger firms with more than 750 employees are not considered by the commission to be small businesses for the purposes of the regulatory flexibility analysis.

During the development of the rule, the potential ability of small businesses to meet each specific requirement was considered, and the provisions were written so that the potential burden on small manufacturers would be minimized, if this could be accomplished without reducing the level of safety provided by the rule.

A mandatory labeling rule was considered as an alternative to proposed standard, as was exempting small businesses from various provisions of the standard. These alternatives were rejected because they would excessively reduce the level of safety.

The other items considered in the Initial Regulatory Flexibility Analysis are discussed elsewhere in this notice under the appropriate topics. Copies of the analysis may be obtained from the Office of the Secretary.

#### *Unreasonable Risk*

The determination of whether a consumer product safety rule is reasonably necessary to reduce an unreasonable risk of injury involves a balancing of the degree and nature of the risk of injury addressed by the rule against the probable effect of the rule on the utility, cost, or availability of the product. These factors have been individually discussed in the proposed findings in § 1204.7 of the proposed rule. The following discussion concerns the relationship of anticipated injury reduction and costs for the requirements of the standard.

As explained above, the retail price increases that would result from promulgation of the proposed standard would amount to about \$1 million per year. Also, the promulgation of the standard would result in about 8 deaths and 8 or more injuries prevented. Thus, the standard would cost approximately \$125,000 for each life saved. Nevertheless, since value-of-life estimates [based on either the discounted future earnings methodology which start at about \$200,000 per life, or

the willingness-to-pay approach which ranges upward to about \$3 million per life] are considerably higher than the cost per life saved, the Commission considers adoption of the standard by a worthwhile objective. Inclusion of monetary factors for injury costs, and pain, suffering, and disability attributable to the injuries that would be prevented by the standard make the standard even more desirable.

Therefore, after considering the anticipated costs and benefits of this rule and the other factors discussed above, and having taken into account the special needs of elderly and handicapped persons to determine the extent to which such persons may be adversely affected by the rule, the Commission preliminarily finds that this rule (including the effective date) is reasonably necessary to eliminate or reduce the unreasonable risk of injury associated with omnidirectional CB base station antennas and that promulgation of the rule is in the public interest.

#### *Environmental Impact*

The Commission has issued environmental review procedures (16 CFR Part 1021, 45 FR 69433; October 21, 1980) concerning agency compliance with the National Environmental Policy Act, as amended. These procedures provide that safety regulations for products normally have little or no potential for affecting the human environment and that preparation of environmental documents is generally not required (§ 1021.5(c)(1)). If a particular safety regulation for products may produce environmental effects, the Commission would prepare appropriate environmental documents.

The Commission has reviewed the proposed standard for omnidirectional CB base station antennas and concludes that it has little or no potential for significantly affecting the human environment. The small amounts of additional insulating material and energy needed to make antennas that would comply with the proposal should produce no significant effects on the human environment. Therefore, the Commission has prepared no environmental documents in considering this proposal.

#### *F. Extensions of Time*

Section 9(a)(1) of the act (15 U.S.C. 2058(a)(1)) requires that within 60 days after the publication of a proposed consumer product safety rule, the Commission shall either (1) promulgate a rule respecting the risk of injury associated with such product, or (2) withdraw the applicable notice of

proceeding, unless the Commission extends the 60 day period for good cause shown and publishes its reasons in the Federal Register. The process of promulgating a consumer product safety rule or withdrawing the applicable notice of proceeding requires the Commission to consider the substantive comments that are received on the proposal, decide if any changes to the proposed rule are required, make the findings required by section 9 of the act, and prepare an appropriate Federal Register notice. In the case of the proposed CB antenna standard, the Commission believes that these actions will require at least 120 days. Since 60 days are being allowed for the public to comment on the proposed rule, a total of at least 180 days from the date of publication of this notice will be required for the Commission to promulgate a rule (or withdraw the Notice of Proceeding). Accordingly, the Commission hereby extends until February 15, 1982, the date by which it must either publish a consumer product safety rule respecting the risk of injury associated with omnidirectional CB base station antennas or withdraw by rule the applicable Notice of Proceeding. This period may be further extended for good cause shown.

#### *F. Proposed Nonmandatory Test Method*

In addition to proposing the standard for omnidirectional Citizens Band base station antennas as a mandatory consumer product safety rule, the Commission is also proposing the alternative of publishing the standard as a nonmandatory test method for the information of the public so that manufacturers or other parties could use it voluntarily to test the safety of insulated or isolated antennas. The final decision on whether to issue a mandatory rule or a nonmandatory test method will be made after a review of all available information, including data, views, and arguments received from the public as a result of this notice. However, if additional actions are taken by industry before a final rule is considered by the Commission, it may not be necessary to take either of the proposed actions. Such additional actions could include the development of a voluntary performance standard, increased marketing of insulated antennas, and intensive information and education programs directed to consumers.

The nonmandatory proposal, if adopted, would be accomplished by publishing the standard as set forth below, but without mandatory language, as a test method which could be used



voluntarily. No penalty would attach to noncompliance with the test method. The Commission recognizes that other test methods or standards could provide an equal or greater protection to consumers from the electric shock hazard presented to consumers when antennas contact power lines. However, the test method would provide information, which was developed by the Commission after extensive research and testing, that would be useful to manufacturers intending to manufacture antennas that would resist the transmission from power lines of a potentially lethal electrical current to consumers who are in contact with the antenna or its mast. The test method could also be used by other parties to test the safety performance of such antennas.

The certification rule proposed below would not be issued in final form if the nonmandatory approach is adopted by the Commission. Instead, manufacturers who produced antennas that complied with the test method would be able to state to purchasers and prospective purchasers of the antenna that it complied with the Commission's test method, without following the precise requirements of the proposed certification rule.

The Commission believes that publication of the standard published below as a test method is consistent with and authorized by section 5(b) of the Consumer Product Safety Act, 15 U.S.C. 2054(b), which provides that the Commission may conduct research on the safety of consumer products and may develop product safety test methods. Publication of a test method for the safety of antennas could also serve the purpose expressed in section 2(b) of the Consumer Product Safety Act, 15 U.S.C. 2051(b), to assist consumers in evaluating the comparative safety of antennas. This purpose would be particularly served by manufacturers who produced antennas that complied with the test method and who made that fact known to consumers.

#### G. Conclusion and Proposal

Having considered the factors discussed above, and the other information available to it, the Commission preliminarily concludes that the standard set forth below for omnidirectional CB base station antennas is reasonably necessary and in the public interest, and should be proposed as a consumer product safety standard.

Therefore, the Commission proposes that Title 16, Chapter II of the Code of Federal Regulations be amended by

adding a new Part 1204 to Subchapter B, reading as set forth below.

For the reasons expressed above, the Commission also proposes to publish the standard as a nonmandatory test method.

### PART 1204—SAFETY STANDARD FOR OMNIDIRECTIONAL CITIZENS BAND BASE STATION ANTENNAS

#### Subpart A—The Standard

##### Sec.

- 1204.1 Scope of the standard.
- 1204.2 Definitions.
- 1204.3 Requirements.
- 1204.4 Electric shock protection tests.
- 1204.5 Manufacturer's instructions.
- 1204.6 Findings.

#### Subpart B—Certification

- 1204.11 General.
- 1204.12 Definitions.
- 1204.13 Certificate of compliance.
- 1204.14 Certification tests.
- 1204.15 Qualification testing.
- 1204.16 Production testing.
- 1204.17 Records.

Authority: Sec. 2, 3, 5, 7, 9, 14, 16, 19, 25 Pub. L. 92-573, 86 Stat. 1207, 1208, 1211-17, 1220, as amended Pub. L. 95-319, § 1, 92 Stat. 386, Pub. L. 94-284, 90 Stat. 503; 15 U.S.C. 2051, 2052, 2054, 2056, 2058, 2063, 2065, 2068, 2074.

#### Subpart A—The Standard

##### § 1204.1 Scope of the standard.

(a) *General.* This Subpart A of Part 1204 is a consumer product safety standard which prescribes safety requirements for Citizens Band omnidirectional base station antennas. The standard is intended to reduce the risk of electrocution or serious injuries occurring if the antenna contacts an electric power line while the antenna is being put up or taken down. One way that this can be accomplished is to insulate the antenna so that if it contacts the power line, there is less of a likelihood that a harmful electric current will be transmitted from the power line through the antenna and mast and ultimately through a person holding the antenna mast. Another possible way to provide this protection is to incorporate an insulating barrier between the antenna and the mast or other supporting structure, so that a harmful electric current will not pass from the antenna to a person in contact with the mast. (If this alternative were chosen, the feed cable from the antenna would have to be insulated or otherwise protected so that it would not provide an electrical path to the mast or a person touching the cable.)

(b) *Description of the standard.*—(1) *Performance tests.* The standard describes two performance tests to

determine if the means chosen by the manufacturer to protect against the shock hazard will provide adequate protection.

(i) First, there is an Insulating Material Effectiveness Test (§ 1204.4(d) of this subpart) in which a high voltage electrode or test rod is brought into contact with the antenna at any point within the protection zone established by § 1204.2(k) of this subpart to ensure that the insulation can withstand the voltage for 5 minutes without transmitting more than 5 milliamperes (mA) root-mean-square (rms) of electric current.

(ii) The other test is an Antenna-Mast System Test (§ 1204.4(e) of this subpart) which is intended to determine whether the means provided to protect against electrocution will withstand the stress imposed when an antenna-mast system falls onto a power line. This test consists of mounting the antenna to be tested on a specified mast and allowing the assembled antenna and mast to fall onto a power line of 14,500 volts rms phase to ground.

(2) *Recommended materials.* (i) Since a substantial portion of the accidents addressed by this standard occur when the antenna is being taken down after it has been installed in an outdoor environment for a number of years, the materials selected to provide protection from shock should be weather resistant.

(ii) Although other materials may also be suitable, materials meeting the following criteria should be reasonably weather resistant:

(A) Material composition includes an ultraviolet stabilizer or screen.

(B) Heat resistance of 212°F (100°C) without loss of elasticity [ANSI/ASTM D 746-79].

(C) Moisture absorption of not more than 0.2 percent [ANSI/ASTM D 570-77].

(D) For heat shrinkable sleeving, temperature flexibility to -40°F (-40°C) with no cracks [Mil Spec. MIL-I-23053C, 20 May 1976].

(3) *WARNING.* Section 1204.5 of this subpart requires a statement in the instructions that the standard will not protect in every instance against electrocution caused by contact with power lines. This is because the standard is intended to provide protection for power line voltages of up to 14,500 volts. Some power lines carry more voltage than this. In addition, not all portions of the antenna are required to be insulated, and the antenna's mast is not required to be insulated. If the power line were to contact one of these uninsulated areas, an electrocution could occur. Furthermore, when the



antenna was manufactured it may not in fact have complied with the standard, or the insulation may have deteriorated or been damaged since the antenna was manufactured. In addition, the insulation cannot withstand high voltages indefinitely, and, after a period of time, the current may penetrate the insulation. Therefore, even if a harmful amount of current is not transmitted immediately, the user should not attempt to remove an antenna that falls into electric power lines, since the insulation could break down while the antenna is being removed. For these reasons, persons handling these antennas should ensure that the antennas are kept away from power lines so that the antenna cannot contact the line while being transported, installed, or removed, even if the antenna is dropped. The Commission recommends that antennas be located at least twice the combined length of the antenna and mast from the nearest power line.

(c) *Scope.* Except as noted below, the standard applies to all CB omnidirectional base station antennas manufactured or imported on or after \_\_\_\_\_, if they are "consumer products." Section 3(a)(1) of the Consumer Product Safety Act ("CPSA"), 15 U.S.C. 2052(a)(1), defines the term "consumer product" as an "article, or component part thereof, produced or distributed (i) for sale to a consumer for use in or around a permanent or temporary household or residence, a school, in recreation, or otherwise, or (ii) for the personal use, consumption or enjoyment of a consumer in or around a permanent or temporary household or residence, a school, in recreation, or otherwise." The term does not include products that are not customarily produced or distributed for sale to, or for the use or consumption by, or enjoyment of, a consumer. A limited exception from coverage of the standard is provided by section 18(a) of the CPSA, 15 U.S.C. 2067, for certain products intended for export and meeting the requirements of section 18(b) of the CPSA.

(d) *Prohibited acts.* It is unlawful to manufacture for sale, offer for sale, distribute in commerce, or import into the United States any product subject to this standard that does not conform with the standard.

#### § 1204.2 Definitions.

In addition to the definitions given in Section 3 of the Consumer Product Safety Act (15 U.S.C. 2052), the following definitions apply for the purposes of this standard.

(a) *Antenna system* means a device for radiating and/or receiving radio waves. Where they are present, the

antenna system includes active elements, ground plane elements, matching networks, element-connecting hardware, mounting hardware, feed cable, and other functional or non-functional elements.

(b) *Antenna-mast system* means the completed assembly of the antenna system and the mast.

(c) *Base station* means a transmitter and/or receiver in a fixed location.

(d) *Citizens Band (CB)* means the frequency band allocated for citizen's radio service.

(e) *Current* means the total rate at which electrical charge is transported through the antenna-mast system in response to the applied test voltage, including both capacitive and resistive components.

(f) *Electrical breakdown* means a failure of the insulating material used with the antenna, such that in the Antenna-Mast System Test of § 1204.4(e) of this subpart, the current flowing through the antenna-mast system is sufficient to actuate the automatic internal cut-off of the high voltage source or exceeds the current that can be measured by the current monitoring device.

(g) *Feed cable* means the electrical cable that connects the antenna system to the transmitter and/or receiver.

(h) *Field joint* means any joint between antenna system sections or parts, or between the antenna system and the mast, that is not assembled by the antenna manufacturer.

(i) *Insulating material and insulation* mean a material that has a very small electric conductivity.

(j) *Omnidirectional antenna* means an antenna system designed or intended primarily to exhibit approximately equal signal transmission or reception capabilities in all horizontal directions simultaneously.

(k) *Protection zone* means that portion of an antenna system which can contact the test rod during the Insulating Material Effectiveness Test or can contact the power line during the Antenna-Mast System Test. This zone consists of those elements of the antenna system extending from the uppermost tip of an upright antenna downward to a point that is 12.0 inches (30.5 cm) above the top of the mast when the antenna system is mounted according to the manufacturer's instructions.

(l) *Voltage, phase to ground*, means that voltage which exists between a single phase of a three phase power system and ground.

#### § 1204.3 Requirements.

All omnidirectional CB base station antennas are required to comply with the following requirements.

(a) *Field joints.* Parts or accessories intended to protect a field joint so that it will meet any other requirement of this standard, and that must be put into place by the person assembling the antenna system, shall be integral with, or not readily removable from, at least one of the antenna sections or parts involved in the joint or shall be necessary in order to complete the joint.

(b) *Feed cable.* When compliance with the requirements of this standard depends on the insulating or other properties of the feed cable, at least 50 feet of the cable shall be supplied by the manufacturer with the antenna system.

(c) *Electrical protection.* Antenna systems shall be manufactured so that if all points within the protection zone of an antenna system were tested by the Insulating Material Effectiveness Test of § 1204.4(d) of this subpart, and the Antenna-Mast System Test of § 1204.4(e) of this subpart, the current measured by the current monitoring device connected to the mast would be no greater than 5.0 milliamperes rms and no electrical breakdown of the antenna system's insulating material would occur.

#### § 1204.4 Electric shock protection tests.

(a) *Safety precautions.* For tests involving high voltage, the following recommended minimum safety precautions should be followed:

(1) At least one test operator and one test observer (preferably one with cardiopulmonary resuscitation (CPR) training) should be present at every test.

(2) The test area (outdoors or indoors) should secure against accidental intrusion by other persons during tests.

(3) Test areas located indoors should be ventilated to avoid buildup of potentially hazardous concentrations of gaseous byproducts which may result from the tests.

(4) Fire extinguishers should be easily accessible in case materials on the test specimen ignite.

(5) "High Voltage Test" warning devices should be activated before start of a test.

(6) Emergency phone numbers should be posted.

(b) *Test conditions.* (1) *Specimens.* All specimens shall be tested as supplied by the manufacturer, following assembly in accordance with the manufacturer's instructions except as provided in paragraph (e)(2) of this section.



(2) *Temperature.* Ambient temperature shall be in the range from 32°F (0° C) to 104°F (40° C).

(3) *Relative humidity.* Ambient relative humidity shall be in the range of from 10 to 90 percent.

(4) *Voltage.* Voltage, phase to ground, of the power line or test probe shall be 14.5 kilovolts rms, 60 hertz.

(5) *Conditioning.* Prior to testing, all specimens shall be exposed for at least 4 hours to the ambient test area environment.

(c) *Test equipment.* (1) High voltage source capable of delivering at least 15 mA rms at 14.5 kV rms, 60 Hz. The source should have an automatic internal cut-off actuated by a present current level.

(2) Instrumentation to measure the rms voltage applied to the antenna system.

(3) Current monitoring device to indicate hazardous components of the total rms current flowing to ground through the mast. One configuration of the circuitry for the current monitoring device (shown in Figure 1) consists of three parallel branches as follows. One branch consists of a resistor in series with a true-rms milliammeter with a maximum error of 5% of the reading in the frequency range of 50Hz to 10MHz (the total of the resistor and the internal resistance of the milliammeter is to be 1000 ohms). A parallel branch consists of a 1000 ohm resistor in series with a 0.08 microfarad capacitor. Another parallel branch should consist of a spark gap rated at 50 to 100 volts as a meter protection device. A different current monitoring device may be used if the measured value of the rms current corresponds to that indicated by the configuration described above.

(4) For the Insulating Material Effectiveness Test:

(i) High voltage electrode or test rod consisting of 1/4 in. (6.4 mm) diameter aluminum rod.

(ii) Support jig, structure, or hanger made of insulating material which is capable of holding antenna system test specimens electrically isolated from all surrounding structures or ground.

(5) For the Antenna-Mast System Test, a high voltage test facility, as shown in Figures 2 and 3, which includes a single power line spanning between two poles 95 to 105 feet (29 to 32 meters) apart, a tensioning device to adjust the cable sag to from 9 to 12 inches (23 to 30 cm), and a pivot fixture (Figure 2), for holding the base of an antennamast system, which can be moved horizontally to adjust the distance to the cable. The cable consists of 1/4 in. diameter 7 by 19 galvanized steel aircraft cable. The low point of the cable shall be between 28 and 29 feet

(8.5 to 8.8 meters) above a horizontal plane through the pivot axis of the pivot fixture.

(d) *Insulating Material Effectiveness Test procedure.* (1) A short piece of typical tubular mast shall be attached to the antenna system to be tested, in accordance with mounting instructions provided with the antenna system by the manufacturer.

(2) If a feed cable is provided with the antenna system, it shall be used in the test. If no cable is provided with the antenna system, a RG-213 cable shall be used in the test (Mil Spec. MIL-C-17/75C, 15 March 1977). In either case, the cable shall be connected to the antenna system, installed parallel to the mast, and secured by taping or similar means at one point on the mast. The side of the bottom end of the cable also shall be secured to the mast.

(3) With the antenna system properly supported and isolated from ground and with the current monitoring device connected to the mast, the test rod shall be connected to the high voltage source and brought into contact with the antenna system at any point within the protection zone (see § 1204.2(k) of this subpart). For each contact point, the voltage shall be increased from 0 to 14.5 kV at a rate of at least 2 kV per second and held at 14.5 kV for 5.0 minutes. Current shall be monitored and the maximum recorded.

(e) *Antenna-Mast System Test procedure.* (1) The antenna system to be tested shall be attached to a mast in accordance with mounting instructions provided by the manufacturer. The mast shall be assembled of commercially available 1 1/4 inch outside diameter 16 gauge tubular steel sections, commonly sold for antenna-mast installations in 5 and 10 feet lengths. The slip joints between the mast sections shall be secured (as with screws) to prohibit rotational or longitudinal movement at the joint. The length of the mast shall be such that when it is mounted in the pivot fixture of the high voltage test facility, the distance from the pivot to the uppermost point on the antenna system is 41.75 to 42.25 feet (12.7 to 12.9 meters).

(2) If a feed cable is provided with the antenna system, it shall be used in the test. If no cable is provided with the antenna system, a RG-213 feed cable shall be used in the test for specification of aa RG-213 cable see (Mil. Spec. MIL-C-17/75C, 15 March 1977). In either case, the cable shall be connected to the antenna system, installed parallel to the mast, and secured by taping or similar means every two feet along the length of the mast. The side of the bottom end of the cable also shall be secured to the mast.

(3) The antenna-mast system shall be mounted in the pivot fixture. The pivot fixture shall be adjusted so that the point of impact between the antenna and the power line takes place at any desired point within the antenna's protection zone. The antenna-mast system shall then be erected to a position of up to 5° from the vertical, leaning toward the simulated power line (see Figure 4). The antenna-mast system shall then be released and allowed to fall against the power line. The test may be performed with different test positions such that the antenna system flexes after impact and slides off the power line and or so that it remains in contact with the power line for 5.0 minutes. Current flow from the antenna-mast system to ground shall be monitored and recorded for each test.

(f) *Interpretation of Results.* An antenna shall pass the Insulating Material Effectiveness Test or the Antenna-Mast System Test if no electrical breakdown occurs and if no current reading exceeds 5 mA rms.

#### § 1204.5 Manufacturer's instructions.

(a) For all antennas covered under this Part 1204, the following statement shall be included in the manufacturer's instructions, in addition to the material required by 16 CFR 1402.4(a)(1)(ii):

Under some conditions, this antenna may not prevent electrocution. Users should keep antenna away from any overhead wires. If antenna contacts a power line, any initial protection could fail at any time. IF ANTENNA NEARS ANY OVERHEAD WIRES, IMMEDIATELY LET GO, STAY AWAY, AND CALL UTILITY COMPANY.

(b) This warning statement shall be in a separate paragraph immediately following the warning statement required by 16 CFR 1402.4(a)(1)(ii)(A).

(c) This warning statement shall be legible and conspicuous and shall be in type that is at least as large as the largest type used on the remainder of the page, with the exception of the logo and any identification of the manufacturer, brand, model, or similar designations, and that is preferably no smaller than 10 point type.

#### § 1204.6 Findings.

As required by section 9(b) and (c) of the Consumer Product Safety Act, 15 U.S.C. 2058(b) and (c), the Commission makes the following findings:

(a) *The degree and nature of the risk of injury the rule is designed to reduce.*

(1) The rule addresses the risk of injury or death caused by electric shock occurring when the antenna comes into contact with electrical power lines while the antenna is being put up or taken down.



(2) About 175 fatalities were estimated to be associated with omnidirectional CB antennas in 1976. The estimated number of fatalities declined to about 125 in 1977 and to about 55 in 1978. Since then, the number of fatalities appears to have leveled off at about 45-50 each year. In addition to the 45-50 deaths, it is estimated that a somewhat greater number of injuries occur annually and that about half of them are serious enough to require surgery, amputation, skin grafts, etc. It is common for multiple deaths or injuries to occur in a single accident.

(3) The Commission's staff has estimated that since 1979 about 20 percent of the accidents involved antennas less than a year old, resulting in about 8 deaths in 1980.

(4) Since a substantial portion of the accidents associated with these antennas occur when the antenna is being taken down after it has been installed in an outdoor environment for a number of years, the standard recommends that materials selected to provide protection from shock be weather resistant.

(5) The standard specifies that protection shall be provided against voltages of 14,500 volts phase-to-ground. Voltages of this level or less are involved in 98 percent of the accidents and 95 percent of the total circuit mileage of distribution circuits.

(b) *The approximate number of consumer products, or types or classes thereof, subject to the rule.*

(1) The standard applies to omnidirectional CB base station antennas. The Commission estimates that there were approximately 5 million omnidirectional base station antennas in use in 1981, and at that time about 75,000 to 100,000 of these antennas were expected to be sold each year for the next several years.

(c)(1) *The need of the public for the consumer products subject to the rule.* Omnidirectional CB base station antennas are used in non-mobile applications to obtain essentially uniform receiving and transmitting capabilities in all directions simultaneously. Although directional antennas can obtain greater reception and transmitting capabilities in one or more directions than can omnidirectionals, directionals are generally more expensive and must be oriented so that they point in the desired direction. Therefore, omnidirectional antennas are preferred by many base station operators, and they can also be used in conjunction with a directional antenna to locate another station to which the directional antenna can then be oriented.

(2) CB stations are used by individuals as a communications device for both practical and personal enjoyment purposes. Some operators volunteer to monitor the commonly used and/or emergency channels for distress calls and summon aid where appropriate, relay messages, and aid local authorities and motorists in monitoring traffic conditions and accidents.

(3) Although operators can fabricate their own antennas, and antennas made for other purposes can be adapted for CB use, for most operators there is no adequate substitute for the commercial CB base station antennas subject to this rule.

(d) *The probable effect of the rule upon the utility, cost, and availability of the product.*—(1) *Utility.* Tests performed for the Commission have shown that an external layer of insulation that will enable the antenna to comply with this standard can be provided that will have no significant effect on the performance of the antenna that cannot be compensated for by minor changes in the antenna. It is also likely that an insulated antenna's useful life would be somewhat longer than that of an uninsulated antenna. To the extent that manufacturers minimize the number of antenna elements in the protection zone, antennas should become less complex and bulky, and installation may also be eased. This may tend to make installation and removal of the antenna somewhat safer as well. If the isolation technique were used to comply with the standard, there should be no effect on the performance of the antenna.

(2) *Cost.* For the simpler designs of omnidirectional CB base station antennas, the manufacturers' production costs will be increased by approximately 20 percent, or \$4 per antenna. For a few models, the production cost increase could be as much as 50 percent. Some models of antennas for which cost increases could be expected to be substantially greater will likely be discontinued. Some manufacturers already make antennas that either comply with the standard or can be made to do so with changes that involve no significant cost increases. The average rise in retail prices due to the standard is expected to be from 10 to 20 percent, or about \$10 per antenna.

(3) *Availability.* The 30 or more different models of omnidirectional CB base station antennas available to consumers in 1980 is expected to be reduced substantially, perhaps by as much as half, after product line changes are made to meet the standard. The difference among some of the models likely to be discontinued are small (often relating only to primarily

cosmetic features that provide a certain degree of product differentiation but do not significantly affect performance). Changes in product lines may be discernible to some consumers, however, since different brands and models of antennas will tend to look more alike (i.e., without upper radials, "hats" or other physical appendages previously incorporated). The availability of replacement components for older antennas may also be restricted somewhat if new, complying components are not compatible with some older models. Production of complying antennas is expected to be sufficient to satisfy demand; no overall "shortage" of antennas is anticipated as a result of the standard. Sales will, instead, shift from relatively low levels for each of many models to relatively higher levels for fewer models.

(e) *Means of achieving the objective of the order while minimizing adverse effects on competition or disruption or dislocation of manufacturing and other commercial practices consistent with the public health and safety.*

(1) The standard may have significant adverse effects on competition among antenna producers. The additional costs associated with the standard, coupled with the recent history of decreasing sales, may cause a number of manufacturers, including one or two of the major producers, to abandon production of omnidirectional CB base station antennas. The standard is likely to impact most heavily on smaller manufacturers, which may have smaller and fewer capital sources from which to draw funds for product design and production changes and for product testing.

(2) Concentration of sales among the three or four largest manufacturers will probably increase as a result of the standard. However, the shrinking size of the market itself may prompt some major firms to drop this product line. It is anticipated that a few firms will purchase complying antennas from one of the remaining firms, and cease production of their own. Companies currently making antennas that substantially comply with the standard will probably gain a significant short-run competitive advantage over other producers whose products do not already comply with the standard's basic provisions.

(3) Compliance with the standard may be relatively more burdensome for the smaller firms in the producing industry. Several small firms which entered the market in the early- and mid-1970's have already left the market due to the overall decrease in demand for the



product. Those that remain account for less than 10 percent of annual unit shipments. Though none of these small firms is expected to go out of business as a result of a standard on omnidirectional CB antennas (most also produce directional CB and other base and mobile communications antennas and equipment), most of them will probably discontinue omnidirectional CB base station antenna production, at least temporarily, until a supplier of complying components is found, or until a decision can be made about long-term prospects.

(4) In order to minimize the adverse effects on competition and manufacturing and other commercial practices, the standard is a performance standard defined in terms of the factors the Commission determined to be significant for the protection of consumers. Thus, manufacturers have a maximum degree of flexibility in how to meet the standard, since the standard does not specify how the protection performance is to be obtained.

(5) The Commission considered making the provisions of the standard less stringent, eliminating requirements applicable to the antenna's feed cable, and adjusting the effective date in order to lessen the adverse impact of the standard on competition and manufacturing practices. However, it was determined that such changes to the standard would reduce the effectiveness of the standard and thus were not consistent with the public health and safety. Furthermore, these changes would not significantly reduce the adverse effects on competition and manufacturing practices. The elimination of requirements applicable to the feed cable would, with known technology, result in almost completely negating the benefits of the standard and is thus not consistent with the public health and safety.

(f) *The rule, including its effective date, is reasonably necessary to eliminate or reduce an unreasonable risk of injury associated with the product.*

(1) The provisions of the standard constitute a related system of performance parameters which are needed as a group to ensure that the performance of new antennas will provide the degree of safety which the Commission has determined is reasonably necessary. Minor changes in the value of each parameter would not significantly reduce the costs of the standard, although in some cases they could substantially reduce the standard's effectiveness.

(2) The Commission estimates that increased retail prices due to the

standard will cost consumers about \$1 million per year. The Commission also estimates that the standard will prevent approximately 8 deaths and 8 or more injuries during the first year the standard is in effect. Thus, if the standard saves 8 lives per year, the cost of the standard will be about \$125,000 for each life saved.\*

(3) As to the benefits from reduced injuries, the Commission estimates that, if 8 injuries are prevented, the actual costs saved by the accidents prevented by the standard will amount to up to \$21,000 to \$37,000, exclusive of pain, suffering, or disability. If a monetary factor for these less quantifiable components is included, annual injury reduction benefits could be about \$288,000 to \$1,680,000.

(4) The effective date of the standard was selected after balancing the increased costs to manufacturers and consumers that are associated with shorter effective dates against the benefits to the public that would be caused by having the effective date as soon as possible.

(5) The requirement for the cautionary statement in the instructions for the antenna is intended to ensure the effectiveness of the standard by discouraging any relaxation of present safety practices involving staying away from power lines. Since instructions for this product are already required by 16 CFR Part 1402, the additional statement should have little or no adverse economic impact.

(6) After considering the costs and benefits associated with the standard, the commission concludes that the standard, including its effective date, is reasonably necessary to eliminate or reduce an unreasonable risk of electric shock injury associated with omnidirectional CB base station antennas and that promulgation of the rule is in the public interest.

#### Subpart B—Certification

##### § 1204.11 General.

Section 14(a) of the Consumer Product Safety Act ("the act"), 15 U.S.C. 2063(a), requires each manufacturer, private labeler, or importer of a product which is subject to a Consumer Product Safety

\* The Commission believes that, in the area of consumer product safety, it is not generally necessary or appropriate to assign a specific monetary value to human life. However, several studies on the costs of injuries and deaths have been conducted in recent years. Value-of-life estimates based on discounted future earnings and the willingness-to-pay approach range from about \$200,000 to about \$3 million. The estimated costs of the CB antenna standard per life saved fall below or within the range suggested by these value-of-life estimating methodologies.

Standard and which is distributed in commerce to issue a certificate of compliance with the applicable standard and to base that certificate upon a test of each item or upon a reasonable testing program. The purpose of this Subpart B of Part 1204 is to establish requirements that manufacturers and importers must follow to certify that their products comply with the Safety Standard for Omnidirectional CB base Station Antennas (16 CFR Part 1204, Subpart A). Private labelers of CB antennas subject to the standard need not issue a certificate of compliance if they have been furnished a certificate issued by the manufacturer or importer of the antennas. This Subpart B describes the minimum features of a reasonable testing program and includes requirements for recordkeeping.

##### § 1204.12 Definitions.

In addition to the definitions set forth in section 3 of the act, and in § 1204.2 of the standard, the following definitions shall apply to this Subpart B of Part 1204:

(a) "Private labeler" means an owner of a brand or trademark which is used on the label of a CB antenna subject to the standard, which bears a private label as defined in section 3(a)(7) of the act, 15 U.S.C. 2052(a)(7).

(b) "Production interval" means a period of time determined by the manufacturer or importer that is appropriate for conducting a test on one or more samples of the CB antennas produced during that period in order to provide a high degree of assurance that all of the products manufactured during that period meet the requirements of the standard. An appropriate production interval may vary depending on the construction of the antenna, the likelihood of variations in the production process, and the severity of the test that is used. The time period for a production interval shall be short enough to provide a high degree of assurance that if the samples selected for testing pass the test, all other CB antennas produced during the period will meet the standard.

##### § 1204.13 Certificate of compliance.

(a) The manufacturer or importer of any product subject to the standard must issue the certificate of compliance required by section 14(a) of the act. If the testing required by this Subpart B of Part 1204 has been performed by or for the foreign manufacturer of a product, the importer may rely on such tests to support the certificate of compliance if the importer is a resident of the United States or has a resident agent in the



U.S., and the records are maintained in the U.S. The importer is responsible for ensuring that the foreign manufacturer's records show that all testing used to support the certificate of compliance has been performed properly with passing or acceptable results and that the records provide a reasonable assurance that all antennas imported comply with the standard.

(b) A certificate of compliance must accompany each product or otherwise be furnished to any distributor or retailer to whom the product is delivered by the manufacturer or importer.

(c) The certificate shall state:

(1) That the product "complies with all applicable consumer product safety standards (16 CFR Part 1204)".

(2) The name and address of the manufacturer or importer issuing the certificate, and

(3) The date of manufacture and, if different from the address in paragraph (c) (2) of this section, the place of manufacture.

#### § 1204.14 Certification tests.

(a) *General.* As explained in § 1204.11 of this subpart, certificates of compliance required by section 14(a) of the act must be based on either a test of each item or on a reasonable testing program.

(b) *Tests of each item.* If the certificate is based on tests of each item, the tests may be either those prescribed by the standard or any other test procedure that will determine that the item tested will comply with the standard.

(c) *Reasonable testing programs.* (1) *Requirements.* (i) A reasonable testing program for a particular model of CB antennas is one which demonstrates with a high degree of assurance that all the antennas of that model will meet all requirements of the standard. Manufacturers and importers shall determine the types and frequency of testing for their own reasonable testing programs. A reasonable testing program which does not test each item produced should be sufficiently stringent that any variations in production, etc., over the production interval would not cause any antenna to fail if tested according to the requirements of the standard.

(ii) All reasonable testing programs shall include qualification tests, which must be performed on one or more samples of the CB antennas representative of each model produced, or to be produced, to demonstrate that the product is capable of passing the tests prescribed by the standard and shall also include production tests, which must be performed during

appropriate production intervals as long as the product is being manufactured.

(iii) *Corrective action and/or additional testing* must be performed whenever certification tests of samples of the product give results that do not provide a high degree of assurance that all antennas manufactured during the applicable production interval will pass the tests of the standard.

(2) *Testing by third parties.* At the option of the manufacturer or importer, some or all of the testing of each item or of the reasonable testing program may be performed by a commercial testing laboratory or other third party. However, the manufacturer or importer is responsible for ensuring that all certification testing has been properly performed with passing or acceptable results and for maintaining all records of such tests in accordance with § 1204.17 of this subpart.

#### § 1204.15 Qualification testing.

(a) *Testing.* Before any manufacturer or importer of CB antennas which are subject to the standard distributes them in commerce, one or more samples of each model shall be tested to determine that all such antennas manufactured after — (the effective date of the standard) will comply with the standard. The type of tests and the manner of selecting samples shall be determined by the manufacturer or importer to provide a reasonable assurance that all antennas subject to the standard will comply with the standard. Any or all of the qualification testing required by this paragraph may be performed before the effective date of the standard ( — ).

(b) *Product modifications.* If any changes are made to a product, after initial qualification testing, that could affect the ability of the product to meet the requirements of the standard, additional qualification tests must be made before the changed antennas are manufactured for sale or distributed in commerce.

#### § 1204.16 Production testing.

(a) *General.* Manufacturers and importers shall test antennas subject to the standard periodically as they are manufactured, to demonstrate that the antennas meet the requirements of the standard.

(b) *Types and frequency of testing.* Manufacturers and importers shall determine the types of tests for production testing. Each production test shall be conducted at a production interval short enough to provide a high degree of assurance that, if the samples selected for testing pass the production tests, all other antennas produced

during the interval will meet the standard.

(c) *Test failure.*—(1) *Sale of antennas.* If any test yields results which do not indicate that all antennas manufactured during the production interval will meet the standard, production must cease and the faulty manufacturing process or design must be corrected. In addition, products manufactured before the appropriate corrective action is taken may not be distributed in commerce unless they meet the standard. It may be necessary to modify the antennas or perform additional tests to ensure that only complying antennas are distributed in commerce. Antennas which are subject to the standard but do not comply with the requirements of the standard cannot be offered for sale, distributed in commerce, or imported in the United States.

(2) *Corrective actions.* When any production test fails to provide a high degree of assurance that all antennas comply with the standard, corrective action must be taken. Corrective action may include changes in the manufacturing and/or assembly process, equipment adjustment, repair or replacement, or other action deemed appropriate by the manufacturer or importer to achieve passing production test results.

#### § 1204.17 Records.

Each manufacturer or importer of CB antennas subject to the standard shall maintain the following records, which shall be maintained for 3 years after the creation of the records and shall be available to any designated officer or employee of the Commission in accordance with section 16(b) of the Consumer Product Safety Act (15 U.S.C. 2065(b)):

(a) Records of the qualification and production testing required by this Subpart B, including a description of the types of tests conducted, the dates and results of the tests, and the production interval selected for the performance of the production testing.

(b) Records of all corrective actions taken, including the specific actions taken to improve the design or manufacture and to correct any noncomplying antenna produced during the period, the date the action was taken, and the test failure which necessitated the action.

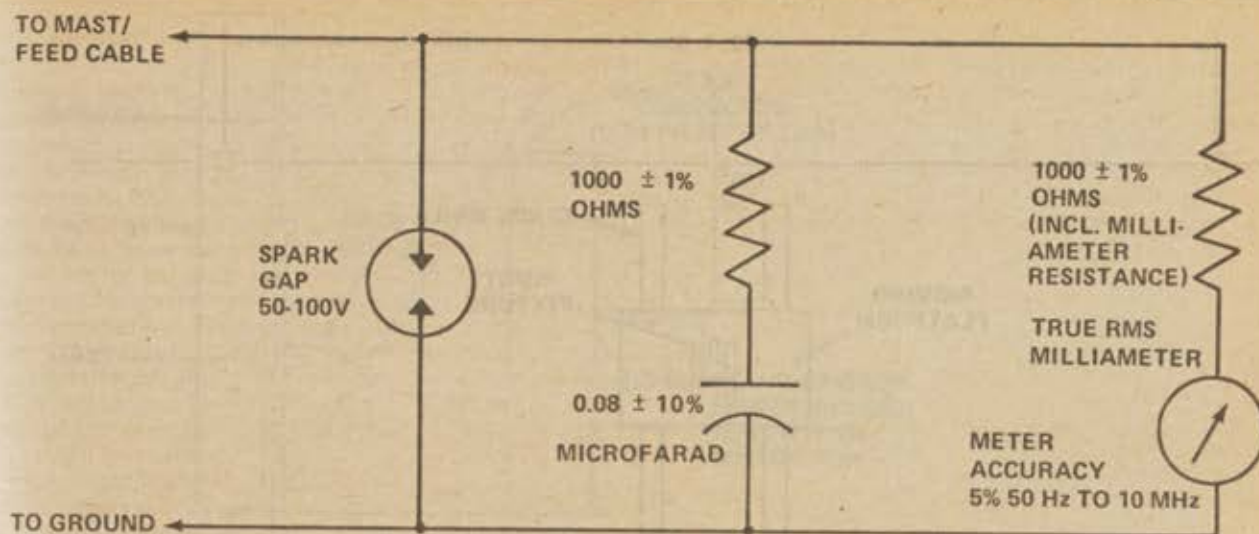
Dated: August 11, 1981.

Sadye E. Dunn,

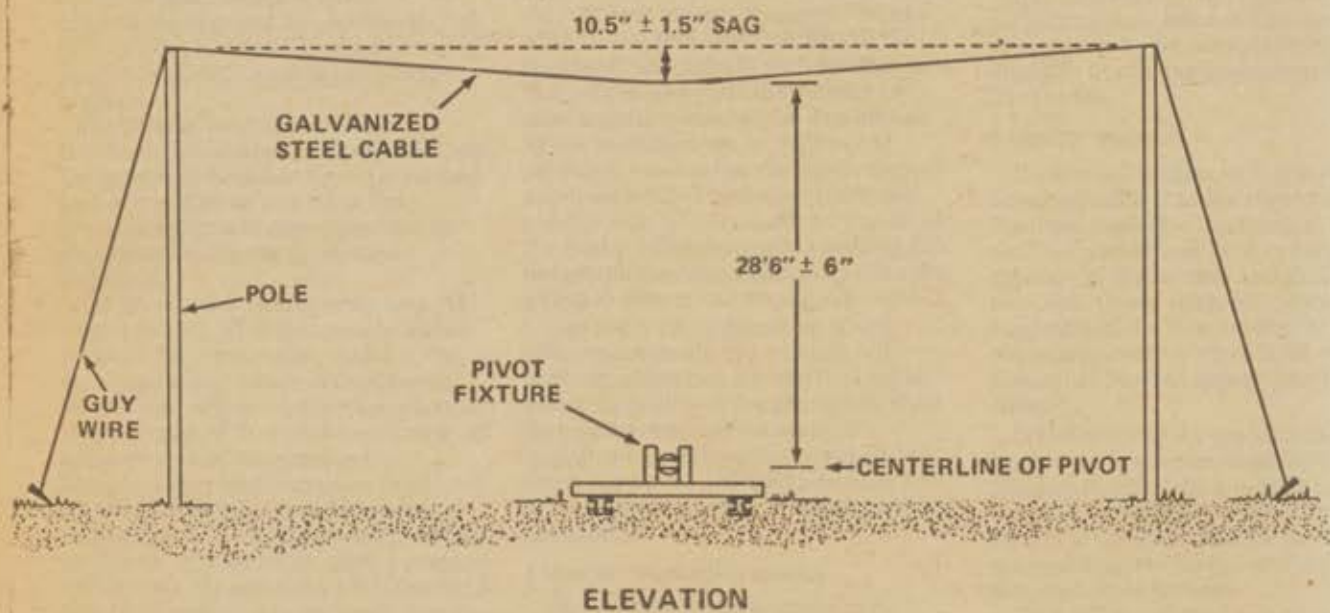
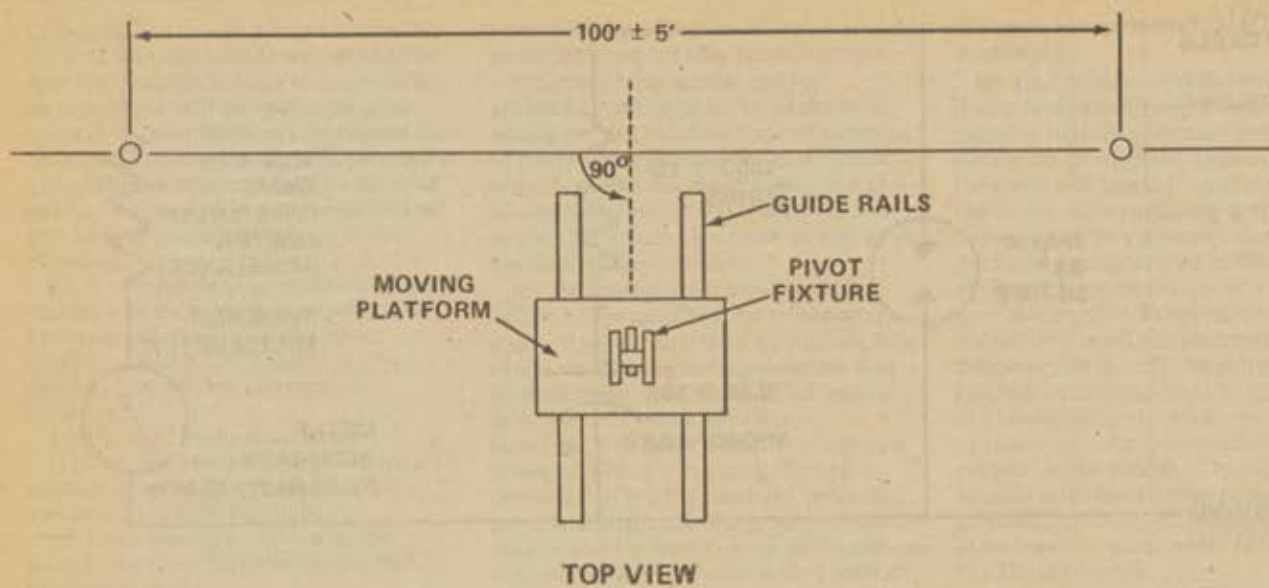
Secretary.

BILLING CODE 6355-01-M

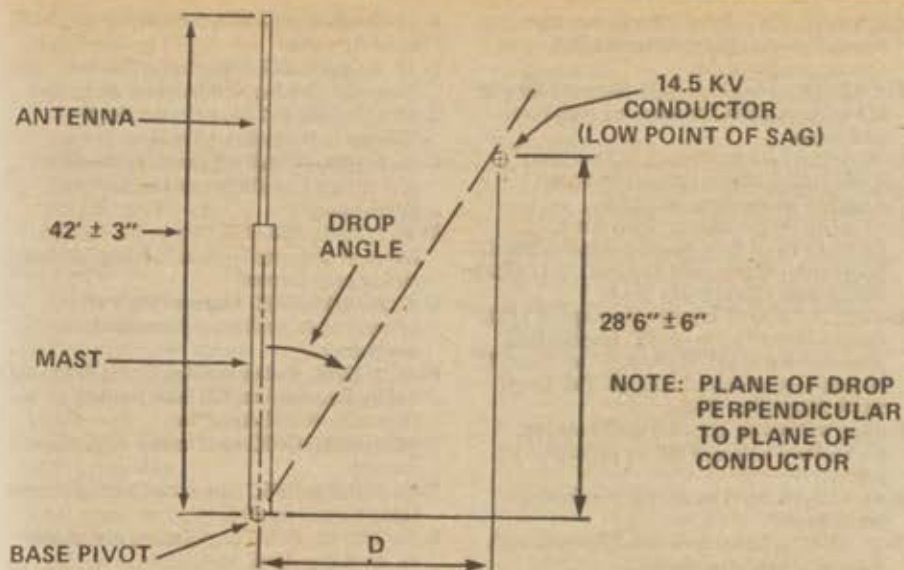












BILLING CODE 6355-01-C



## Footnotes

(1) I-17 at Table 1. (Letter and number designations refer to the document numbers in the bibliography at the end of this notice. "I-17" refers to document 17 under "Injury Data.")

- (2) EC-14 at 25-26.
- (3) I-17 at Table 1; I-18; I-22.
- (4) I-18; I-22.
- (5) I-17 at 2, 34; I-18.
- (6) I-17 at Table 4, Table B-1; I-10 at 2.
- (7) I-18; I-22.
- (8) E-11.
- (9) E-48 at 6.
- (10) I-17 at Table 14.
- (11) E-22.
- (12) EC-14 at 16.
- (13) I-17 at 17.

(14) About 2 percent involve contact with the lowest elements of the antenna and another 4 percent involve possible contact with the mast.

- (15) E-48 at 6.
- (16) E-55 at para. 6.3; E-31 at para. 6.8.5 concerning tests of plastisol.
- (17) E-11 at 3-16, 17.
- (18) E-11 at 3-17.
- (19) E-53 at para. 5.3.
- (20) E-45 at 7-8.
- (21) CPSC in-depth investigation reports.
- (22) I-17 at 6, 8.
- (23) I-17 at 6 and Table 3.
- (24) I-17 at 8, 12, Table 5, and Table B-1.
- (25) E-48 at para. 6.10.4, 6.10.5, 7.5.5, Table 7.5-1, para. 7.6.5, and 7.6.8. Drop tests and abrasion tests show marked effects of abrasion on insulating materials and also created 2 failures that could be attributed to abrasion effects.

- (26) E-48 at 19.
- (27) *Id.*
- (28) E-48 at 19; E-53 at C-7.
- (29) E-31 at 4-5.
- (30) EC-14 at 20-22.
- (31) EC-13A.
- (32) EC-14 at 20-22.
- (33) D-66.
- (34) D-66 at 74-79.
- (35) The Commission's files contain reports of accident investigations (referred to as "in-depth investigations"). The reports associated with CB omnidirectional base station antennas were examined for statements of consumer perceptions of the risk associated with power lines.

## Bibliography

## Engineering Documents

- E-1, 6/21/76, CPSC Engineering memo on hazard.
- E-2, 11/12/76, CPSC Engineering options memo.
- E-3, 11/18/76, CPSC memo describing antennas.
- E-4, 11/30/76, CPSC Engineering memo concerning options, including isolation.
- E-5, 3/24/77, Letter from VP of Shakespeare concerning isolation.
- E-6, 3/29/77, Letter from Bill Woolfolk, Tandy Communication Antennas, concerning isolation.
- E-7, 4/4/77, Letter from J. McKendree, Hy-Gain Electronics Corp., to L. Mulligan, CPSC, concerning isolation technique and cost of standard.

- E-8, 4/5/77, TWX from Larry Kline, Antenna Specialists Co., to Pete Bennett EIA, concerning isolation.
- E-9, 4/5/77, Letter from P. H. Bennett, EIA, to L. Mulligan, CPSC, concerning isolation technique.
- E-10, 4/11/77, Memo from J. L. Mulligan, TAD/OSCA, discussing preliminary thoughts on Antenna isolation.
- E-11, 4/10/78, Feasibility Study for a Citizen's Band Base Station antenna Safety Standard (Final Report-Contract C-77-0083 by Systems Consultants Inc.).
- E-12, 1/23/79, Staff briefing package of 1/22/79 forwarded Tab B—CPSC Engineering memo on standard feasibility. Tab C—7/7/78 memo on standard options. Tab D—4/10/78 Feasibility Study.
- E-13, 6/30/79, Log of CPSC staff meeting, preliminary setting 5 mA as leakage current.
- E-14, 9/20/79, Staff memo on weathering requirement.
- E-15, 10/8/79, Letter from Shakespeare with data on insulated antennas.
- E-16, 10/22/79, SCI status report.
- E-17, 10/25/79, Letter from J. R. Corum, Ph. D., re feasibility of standard.
- E-18, 10/29/79, Letter from EIA to CPSC re drop in sales and possible increase in line voltage to 44 kV.
- E-19, 11/16/79, SCI memo on "typical mast".
- E-20, 11/19/79, SCI Status Report.
- E-21, 11/28/79, Letter from Public Service Electric and Gas Company with data on wire and sag curves.
- E-22, 2/12/80, Letter from PSE&G concerning existing mileage of circuits for various voltages.
- E-23, 2/15/80, SCI status report.
- E-24, 2/27/80, Memo of phone conversation with C. G. Troxwell concerning voltages.
- E-25, 2/27/80, EIA memo attaching letter from Packer Engineering on feasibility of a standard.
- E-26, 3/14/80, SCI Progress Report.
- E-27, 3/24/80, SCI Report on Insulation Tubing.
- E-28, 4/15/80, SCI Progress Report.
- E-29, 5/5/80, Breakdown data for RG-213U cable.
- E-30, 5/12/80, Analysis of plastic material submitted by Wynntenna.
- E-31, 6/30/80, SCI Final Report—Tasks I-V.
- E-32, 8/8/80, Letter from NBS concerning corona generated pulses.
- E-33, 8/30/80, Report on CB antennas' Electric Shock Protection by Insulation, R. A. Yereance.
- E-34, 9/16/80, SCI Progress Report.
- E-35, 9/25/80, SCI Mini Report No. 1—Rod and Foil Electrode Comparison Tests.
- E-36, 9/29/80, SCI Mini Report No. 2—Assessment of Risks Associated with Corona Currents.
- E-37, 10/80, Weathering Requirement for CB Antenna Insulation, S. D. Toner (NBS).
- E-38, 10/8/80, UL comments on Mini Report No. 2.
- E-39, 10/16/80, Log of 9/3/80 meeting on leakage current.
- E-40, 10/20/80, SCI Mini Report No. 3—Calculated vs. Measured Currents with Foil Electrodes.
- E-41, 10/29/80, Record of phone conversation with F. Pray of SCI concerning pole and cable dimensions.

- E-42, 11/26/80, SCI Mini Report No. 4—Wind Load Analysis.
- E-43, 11/26/80, SCI Mini Report No. 5—Dielectric Testing of Fiberglass Antennas.
- E-44, 12/16/80, SCI Mini Report No. 6—Voltage to Breakdown Tests.
- E-45, 1/9/81, SCI Mini Report No. 7—Effect of Ambient Conditions on Current Readings.
- E-46, 1/26/81, SCI Mini Report No. 8—The Effect of Antenna System Cabling Methods on Leakage Current.
- E-47, 2/20/81, CPSC Engineering staff comments on preliminary economic assessment.
- E-48, 2/28/81, Rationale Supporting Proposed Safety Standard for CB Base Station Omnidirectional Antennas.
- E-49, 3/12/81, CPSC staff memo on leakage current.
- E-50, 3/18/81, CPSC memo concerning human factors considerations.
- E-51, 3/20/81, CPSC Engineering comments on draft standard.
- E-52, 4/16/81, SCI Mini Report No. 9—Comparison of Current Monitoring Instrumentation.
- E-53, 5/29/81, SCI Final Report—Task VI.
- E-54, 6/19/81, Briefing Package on Recommended Standard (8/3/81) Tab C—Memorandum from Dennis McCoskrie, ESES, to Carl Blechschmidt dated March 20, 1981, with Engineering comments on draft standard. Tab H—Memorandum from Shelley Halupka, HIEH, to Carl Blechschmidt dated March 18, 1981, concerning human factors considerations.
- E-55, 6/30/81, SCI Final Report—Task VII.

## Economic Information

- EC-1, 11/15/76, CPSC/BEA, memo on antenna industry.
- EC-2, 4/4/77, Letter from J. McKendree, Hy-Gain Electronics Corp., to L. Mulligan, CPSC, concerning isolation technique and cost of standard.
- EC-3, 1/23/79, Staff briefing package of 1/22/79 forwarded Tab C—12/15/78 memo on antenna prices. Tab C—1/1/78 memo on antenna prices.
- EC-4, 6/7/79, Letter from Channel Master showing decline in CB Antenna sales.
- EC-5, 7/3/79, EIA list of antenna manufacturers.
- EC-6, 10/1/79, Letter from H. Johnson, RCA, concerning antenna sales.
- EC-7, 10/29/79, Letter from EIA to CPSC re drop in sales and possible increase in line voltage to 44 kV.
- EC-8, 11/16/79, CPSC staff memo on antenna sales.
- EC-9, 12/13/79, Briefing package on antenna sales.
- EC-10, 1/6/81, CPSC Draft Preliminary Economic Assessment, 12/80, T. Karels and D. Ray.
- EC-11, 1/25/81, Comments from L.H. Chapman on Preliminary Economic Assessment.
- EC-12, 2/20/81, CPSC Engineering staff comments on preliminary economic assessment.
- EC-13, 3/81, Initial Regulatory Flexibility Analysis.



- EC-13A, 3/18/81, CPSC staff comment on draft briefing paper.  
 EC-14, 15, 6/19/81, Briefing Package on Recommended Standard (6/3/81).  
 Tab F—Economic report on The Recommended Standard for Omnidirectional CB Base Station Antennas, March, 1981, and Initial Regulatory Flexibility Analysis, March, 1981.

#### *Injury Data*

- I-1, 6/2/76, CPSC Bureau of Epidemiology memo on hazard.  
 I-2, 11/16/76, CPSC memo with injury data.  
 I-3, 11/18/76, CPSC memo with injury data.  
 I-4, 11/18/76, CPSC memo with updated injury data.  
 I-5, 11/22/76, CPSC memo Mulligan to files, with injury data.  
 I-6, 12/8/76, CPSC memo concerning data in TAD memo of 11/22/76 (Tab E, 12/13/76 Briefing Package).  
 I-7, 12/16/76, Additional Information concerning CP 76-19 (injury data and correspondence).  
 I-8, 4/7/78, CPSC Preliminary Report—NEISS In-depth Investigation No. 780404DAL1202.  
 I-9, 1/19/79, HIEA comment on EIA injury reduction estimate.  
 I-10, 1/23/79, Staff briefing package of 1/22/79 forwarded Tab A—Analysis of Accidents Involving Outdoor Communications Antennas, B. Harwood, November 1978.  
 I-11, 6/1/79, Letter from L.H. Chapman with injury data.  
 I-12, 7/79, "Electrical Injuries," Surgery, Gynecology and Obstetrics, pp. 97-108.  
 I-13, 11/1/79, Data on shock problems and injuries submitted by L.H. Chapman.  
 I-14, 11/1/79, Additional data from Mr. Chapman.  
 I-15, 11/9/79, Comment from T. Wilkie on antenna electrocution incident.  
 I-16, 2/7/80, Injury data from L.H. Chapman.  
 I-17, 6/80, Accident Factors Relevant to the Development of a Safety Standard—Omnidirectional Citizens' Band Base Station Antennas, L. Smith & R. Newman.  
 I-18, 12/29/80, CPSC staff memo "1979 Fatality Estimates—Communications Antennas."  
 I-19, 2/20/81, CPSC staff memo on 1980 injury data.  
 I-20, 21, 6/19/81, Briefing Package on Recommended Standard (6/3/81).  
 Tab F—Economic report on The Recommended Standard for Omnidirectional CB Base Station Antennas, January 1981, and Initial Regulatory Flexibility Analysis, March, 1981.  
 I-22, 7/21/81, CPSC memorandum on 1980 fatalities.

#### *Background Documents and Other Documents Generated During Development of the Proposal*

- D-1, 9/16/76, Chapman petition CP 76-19.  
 D-2, 11/15/76, Letter from ARRL suggesting "many practical difficulties" with insulation.  
 D-3, 11/23/76, Log of meeting with EIA and industry members.

- D-4, 12/13/76, Staff briefing package of 12/3/76 on Petition CP 76-19 forwarded to Commission.  
 D-5, 12/16/76, Additional information concerning CP 76-19 (injury data and correspondence).  
 D-6, 1/7/77, Letter from L. H. Chapman.  
 D-7, 1/19/77, Record of Commission action in partially granting Petition CP 76-19 from Lawrence H. Chapman for labeling and instructions for CB base station antennas and directing staff to provide information on the feasibility of developing a safety standard.  
 D-8, 1/23/79, Staff briefing package of 1/22/79 forwarded Tab C—Log of meeting with EIA. Tab E—CPSC memo 1/9/79 on label effectiveness. Tab F—EIA letter on development of standard by EIA (1/17/79). Tab G—CERM memo on mandatory vs. voluntary standards.  
 D-9, 2/12/79, Preliminary Study of EIA's Ad Hoc Committee on Antenna Safety.  
 D-10, 2/14/79, CPSC reply to 1/17/79 EIA letter.  
 D-11, 3/5/79, Additional data concerning standard development forwarded to Commission—staff memo of 3/5/79 and EIA letter of 3/1/79.  
 D-12, 3/9/79, Record of Commission action directing staff to develop options for section 7 mandatory standard.  
 D-13, 3/13/79, CPSC staff memo on EIA standard development procedures.  
 D-14, 3/27/79, CPSC staff memo on resource estimate for standard development options and draft management plan.  
 D-15, 3/27/79, Letter from CPSC Chairman to EIA concerning EIA request to defer action on a mandatory standard.  
 D-16, 4/2/79, Log of meeting with EIA.  
 D-17, 4/9/79, Approval for CPSC staff to monitor EIA standard development.  
 D-18, 4/13/79, Record of Commission action to begin development of a mandatory standard by the Commission.  
 D-19, 5/14/79, CPSC log of meeting with EIA.  
 D-20, 5/31/79, Draft Federal Register notice of intent to develop a standard forwarded to Commission.  
 D-21, 6/15/79, Management Plan forwarded to Commission.  
 D-22, 6/18/79, CPSC memo on management Plan.  
 D-23, 7/3/79, Notice of Commission Intent to develop a proposed standard—44 Fed. Reg. 38854.  
 D-24, 8/1/79, Interim Report to Commission.  
 D-25, 8/1/79, Comments CC10-79-1 through 14 on notice of intent.  
 D-26, 8/7/79, Comments CC10-79-15 through 18 on notice of intent.  
 D-27, 8/10/79, Packet of information for potential participants.  
 D-28, 8/23/79, Paper from R.A. Yereance on design vs. performance standards.  
 D-29, 8/28/79, Draft standard submitted by R. A. Yereance.  
 D-30, 9/14/79, Notice of Proceeding (44 Fed. Reg. 53676).  
 D-31, 10/22/79, Log of meeting with EIA.  
 D-32, 11/1/79, Transcript—1st Public Meeting  
 D-33, 11/1/79, Subcommittee minutes.  
 D-34, 11/14/79, CPSC response to 10/29/79 EIA letter.

- D-35, 11/16/79, Comment from REACT opposing standard and supporting public information effort.  
 D-36, 11/16/79, Minutes of 11/1/79 Human Factors and Labeling Subcommittee.  
 D-37, 11/20/79, Subcommittee Minutes.  
 D-38, 12/7/79, W.L. Weeks' comments on standard.  
 D-39, 1/4/80, Log of meeting with EIA.  
 D-40, 1/25/80, Letter from Jeff Wingard to CPSC.  
 D-41, 2/5/80, Second Staff status report to Commission.  
 D-42, 3/11/80, Informational materials for Second Public Meeting.  
 D-43, 3/11/80, Transcript—Public Meeting.  
 Transcript—Meeting at CPSC lab.  
 Transcript—Meeting of Test and Standard Subcommittee.  
 Transcript—Meeting of Human Factors Subcommittee.  
 Transcript—Meeting of Hazard Analysis Subcommittee.  
 Minutes—Human Factors and Labeling Subcommittee.  
 D-44, 3/17/80, Market Facts letter concerning survey sample.  
 D-45, 3/30/80, Comments from R.A. Yereance on various documents.  
 D-46, 4/2/80, CPSC Letter to Jeff Wingard, responding to his 1/25/80 letter (attached).  
 D-47, 4/9/80, Progress report from Human Factors and Labeling Subcommittee.  
 D-47-A, 4/9/80, Letter from REACT to the Commission.  
 D-48, 4/15/80, Third Staff progress report to Commission.  
 D-49, 4/15/80, Log of EIA meeting.  
 D-50, 4/21/80, Staff memo on public perception of power lines.  
 D-51, 6/24/80, Transmittal of minutes for 3/11/80 meeting of Hazard Analysis Committee.  
 D-52, 7/14/80, Fourth Staff Progress Report to Commission.  
 D-53, 7/14/80, Transcript—Third Public Meeting.  
 D-54, 7/14/80, Letter from REACT to Commission.  
 D-55, 7/15/80, Transcript—Third Public Meeting (cont.).  
 D-56, 7/15/80, Comments from J. Wingard and L. Chapman on standard specs.  
 D-57, 8/1/80, Comments from H. Tanner on standard specs.  
 D-58, 8/15/80, Comments from L. G. Kopelman.  
 D-59, 8/29/80, Comments from J. Lewis, Shakespeare, on standard specs.  
 D-60, 9/11/80, Comments from D. Horn on standard specs.  
 D-61, 10/6/80, Log of EIA meeting terminating voluntary development effort.  
 D-62, 10/5/80, Fifth Staff Progress Report to Commission.  
 D-63, 10/17/80, Comment on need for standard from R. Meinert.  
 D-64, 10/21/80, EIA letter to CPSC re termination of voluntary effort.  
 D-65, 11/3/80, CPSC log of 10/6/80 EIA meeting forwarded to Commission.  
 D-66, 11/21/80, Evaluation of the Impact of the Communications Antenna Labeling



Rule, Public Sector Research Group.  
Market Facts.

D-67, 11/21/80, EIA news release on antenna accident hazard.

D-68, 11/24-25/80, Log of CPSC staff plant visits.

D-69, 1/6/81, Portions of "Evaluation of the Impact of the Commission's Antenna Labeling Rule" forwarded to Commission.

D-70, 1/9/81, 12/19/80 memo forwarded to Commission.

D-71, 1/13/81, Letter from CPSC soliciting comment on draft standard, 11/17/80 meeting transcript, and Preliminary Economic Assessment.

D-72, 1/19/81, Sixth staff progress report to Commission.

D-73, 1/27/81, Comments from L. H. Chapman on draft standard.

D-74, 1/29/81, Comment from F. Nesh on draft standards.

D-75, 2/1/81, Comments from H. Tanner on draft standards.

D-76, 2/6/81, Comments from H. Wingard on draft standards.

D-77, 2/19/81, CPSC staff comments on 11/17/80 meeting.

D-78, 2/20/81, CPSC memo concerning CPSC communications activities for antennas.

D-79, 2/23/81, CPSC staff letter to EIA concerning possible adoption of draft standard by EIA.

D-80, 2/25/81, EIA response to 2/23/81 CPSC letter.

D-81, 3/4/81, Comments by L. Kopelman on draft standard and economic assessment.

D-82, 3/4/81, CPSC memo concerning evaluation of antenna labeling rule.

D-83, 4/30/81, Log of 4/14/81 meeting with EIA forwarded to Commission.

D-84, 6/19/81, Briefing Package on Recommended Standard (6/3/81).

Tab A—Log of EIA meeting held in Los Angeles, California on October 6, 1980, and a letter from Peter Bennett, EIA, to Chairman Susan King, dated October 21, 1980.

Tab B—Chronology of Events connected with Commission activities on communication antennas.

Tab D—Draft Federal Register notice for proposed rule.

Tab C—Memorandum from Betty Hely, OBPPE, to Melvin Spencer dated March 4, 1981, concerning evaluation of antenna labeling rule.

Tab I—Memorandum from Norm Rosen, CED, to Carl Blechschmidt dated February 20, 1981, concerning communications activities for antennas.

Tab J—Participants' comments on the final draft standard.

Tab K—Log of meeting with EIA held on April 14, 1981, in Washington, D.C.

D-85, 8/29/81, Letter from REACT to the Commission.

D-86, 7/6/81, Letter from FCC declining comment.

[FR Doc. 81-23609 Filed 8-13-81; 8:45 am]

BILLING CODE 9355-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Part 1030

[Docket No. 80N-0099/PRC]

#### Radiological Health; Performance Standards for Microwave and Radiofrequency-Emitting Products; Amendments to Microwave Oven Standard, Measurement and Test Conditions; Extension of Comment Period

**AGENCY:** Food and Drug Administration.

**ACTION:** Proposed rule; extension of comment period.

**SUMMARY:** The Food and Drug Administration (FDA) announces an extension of the comment period on its proposal to amend the performance standard for microwave ovens to delete the error limit and effective aperture requirements for instruments used for compliance measurement of leakage radiation from microwave ovens and to add a definition of "equivalent plane-wave power density". FDA is taking this action in response to a request from the Association of Home Appliance Manufacturers (AHAM) for an extension of the comment period.

**DATE:** Comments by October 23, 1981.

**ADDRESS:** Written comments to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Zory R. Glaser, Bureau of Radiological Health (HFX-460), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3426.

**SUPPLEMENTARY INFORMATION:** In the Federal Register of November 28, 1980 (45 FR 79028), FDA published a final rule revising 21 CFR 1030.10(c)(1) and (3)(i) and (ii) to delete the error limit and effective aperture requirements for instruments used for compliance measurement of leakage radiation from microwave ovens, and adding 21 CFR 1030.10(b)(8) to define "equivalent plane-wave power density". In the Federal Register of April 24, 1981 (46 FR

23233), FDA stayed until further notice the effective date of the amendments to permit reconsideration of the impact of the rule. In that same issue of the Federal Register (46 FR 23266), FDA reopened the comment period on the proposed amendments. The comment period closed on July 23, 1981.

Prior to the date on which the comment period closed, FDA received a request from AHAM for an extension of the comment period because of the complexity of the proposed rule and differences in interpretation of the proposal.

FDA met with representatives of AHAM on June 24 and July 14, 1981, and has attempted to clarify the proposal and to resolve the differences in interpretation of the proposed rule. The agency believes, however, that additional time for the preparation and submission of meaningful and carefully constructed comments on the proposal is in the public interest. FDA is, therefore, granting a 90-day extension of the comment period to October 23, 1981.

Therefore, under the Public Health Service Act as amended by the Radiation Control for Health and Safety Act of 1968 (sec. 358, 82 Stat. 1177-1179 as amended (42 U.S.C. 263f)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10 (formerly 5.1; see 46 FR 26052; May 11, 1981)), the comment period on the proposal to amend the performance standard for microwave ovens regarding measurement and test conditions is extended to October 23, 1981.

Interested persons may on or before October 23, 1981, submit to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding the proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 10, 1981.

William F. Randolph,  
Acting Associate Commissioner for  
Regulatory Affairs.

[FR Doc. 81-23609 Filed 8-13-81; 3:03 pm]

BILLING CODE 4110-03-M



# ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

[A-1 FRL 1893-1]

### Approval and Promulgation of Implementation Plans—Maine; Notice of Proposed Rulemaking: Revision to Sulfur in Fuel Regulation for Portland, Maine

#### Correction

In FR Doc. 81-22770, appearing on page 39861 in the issue of Wednesday, August 5, 1981, on page 39862, column 1, line 4, the month "August" should be changed to "September."

BILLING CODE 1505-01-M

## 40 CFR Part 123

[SW-1-FRL-1908-6]

### New Hampshire Application for Interim Authorization, Phase I, Hazardous Waste Management Program

AGENCY: Environmental Protection Agency, Region I.

ACTION: Notice of public hearing and public comment period.

**SUMMARY:** EPA has promulgated regulations under Subtitle C of the Resource Conservation and Recovery Act (RCRA) (as amended) to protect human health and the environment from the improper management of hazardous waste. Phase I of the regulations was published in the Federal Register on May 19, 1980 (45 FR 33063). These regulations include provisions for authorization of State programs to operate in lieu of the Federal program. Today EPA is announcing the availability for public review of the New Hampshire application for Phase I interim authorization, inviting public comment, and giving notice of a public hearing to be held on the application.

**DATES:** Comments on the New Hampshire interim authorization application must be received by September 21, 1981.

**Public hearing:** EPA will conduct a public hearing on the New Hampshire interim authorization application at 9:00 AM on September 15, 1981. EPA reserves the right to cancel the public hearing if significant public interest in a hearing is not expressed. The State of New Hampshire will participate in the public hearing.

**ADDRESSES:** The public hearing will be held at: Health & Welfare Auditorium, Hazen Drive, Concord, New Hampshire 03301.

Copies of the New Hampshire interim authorization application are available at the following addresses for inspection

and copying by the public:

(1) Bureau of Solid Waste Management, Hazen Drive, Concord, New Hampshire 03301 (telephone (603) 271-4608).

(2) Environmental Protection Agency, Region I Office Library, Room 2100 B, John F. Kennedy Federal Building, Boston, Massachusetts 02203 (telephone (617) 223-5791/4017).

(3) EPA Headquarters Library, Room 2404, 401 M Street, S.W., Washington, D.C. 20460.

Written comments and requests to speak at the hearing should be sent to: Susan L. Hanamoto, New Hampshire State Coordinator, Waste Management Branch, U.S. EPA, Region I, John F. Kennedy Federal Building, Boston, Massachusetts 02203 (telephone (617) 223-1591).

**FOR FURTHER INFORMATION CONTACT:** Susan L. Hanamoto (617) 223-1591.

**SUPPLEMENTARY INFORMATION:** In the May 19, 1980 Federal Register (45 CFR 33063), the Environmental Protection Agency promulgated Phase I of its regulations, pursuant to Subtitle C of the Resource Conservation and Recovery Act of 1976 (as amended), to protect human health and the environment from the improper management of hazardous waste. EPA's Phase I regulations established, among other things: the initial identification and listing of hazardous wastes; the standards applicable to generators and transporters of hazardous waste, including manifest system; and the "interim status" standards applicable to existing hazardous waste management facilities before they receive permits.

The May 19 regulations also include provisions under which EPA can authorize qualified State hazardous waste management programs to operate in lieu of the Federal program. The regulations provide for a transitional stage in which qualified State programs can be granted interim authorization. The interim authorization program is being implemented in two phases corresponding to the two stages in which the underlying Federal program will take effect. In order to qualify for interim authorization, the State hazardous waste program must, among other things:

(1) Have had enabling legislation existence prior to August 17, 1980 and,

(2) Be "substantially equivalent" to the Federal program.

A full description of the requirements and procedures for State interim authorization is included in 40 CFR Part 123 Subpart F (45 FR 33479). The State of New Hampshire has submitted a complete application to EPA for Phase I interim authorization. Copies of the

State submittal are available for public inspection and comment as noted above. A public hearing is to be held on the submittal, unless significant public interest is not expressed, as also noted above.

#### Conduct of Hearing

The hearing is intended to provide an opportunity for interested persons to present their views and submit information for consideration by EPA in the decision whether to grant New Hampshire interim authorization for Phase I of the RCRA program. A panel of EPA employees involved in relevant aspects of the decision will be present to receive the testimony. The hearing will be informally structured. Individuals providing oral comments will not be sworn in, nor will formal rules of evidence apply. Questions may be posed by panel members to persons providing oral comments; however, no cross-examination by other participants will be allowed. Representatives from the State of New Hampshire will testify first and present a short overview of the State program. Other commenters will then be called in the order in which their request were received by EPA. As time allows, persons who did not sign up in advance but who wish to comment on the State's application for Phase I interim authorization will also be given an opportunity to testify. Each organization or individual will be allowed as much time as possible for oral presentation based on the number of requests to participate and the time available for the hearing. As a general rule, in order to ensure maximum participation and allotment of adequate time for all speakers, participants should limit the length of their statements to 10 minutes. The public hearing will be followed, as time permits, by a question and answer session during which participants may pose questions to members of the panel.

#### Preparation of Transcripts

A transcript of the comments received at the hearing will be prepared. To ensure accurate transcription, participants should provide written copies of their statements to the hearing chairperson. Transcripts will be available upon request from Susan L. Hanamoto, New Hampshire State Coordinator, Waste Management Branch, Region I, U.S. Environmental Protection Agency, John F. Kennedy Federal Building, Boston Massachusetts 02203 (telephone (617) 223-1591) approximately three days after the hearing at cost.



Dated: August 7, 1981.

Lester A. Sutton,

Regional Administrator, Region I.

[FR Doc. 81-23742 Filed 8-13-81; 8:45 am]

BILLING CODE 5560-38-M

#### 40 CFR Parts 204, 205, and 211

[EN-FRL 1904-6]

### Noise Emission Standards for Portable Air Compressors, Medium and Heavy Trucks, Motorcycles and Motorcycle Replacement Exhaust Systems, Truck Mounted Solid Waste Compactors, and Noise Labeling Requirements for Hearing Protectors; Notice of Proposed Rulemaking.

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of Proposed Rulemaking.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing revocation of the reporting and recordkeeping requirements of the following regulations: Noise Emission Standards for Construction Equipment, General Provisions; Noise Emission Standards for Portable Air Compressors; Transportation Equipment Noise Emission Controls, General Provisions; Noise Emission Standards for Medium and Heavy Trucks; Noise Emission Standards for Motorcycles and Motorcycle Replacement Exhaust Systems; Noise Emission Standards for Truck Mounted Solid Waste Compactors; Product Noise Labeling, General Provisions; and Noise Labeling Requirements for Hearing Protectors.

The Agency proposes to revoke the reporting and recordkeeping requirements of these regulations. The Agency in a final rule published in today's *Federal Register* is immediately suspending enforcement of these reporting and recordkeeping requirements and will not enforce them prior to final action on this proposal.

**DATE:** Comments on this proposed action must be received on or before September 14, 1981. Submit comments in writing, with two copies.

**ADDRESS:** Comments should be sent to: Mr. Timothy J. Dwyer, Acting Director, Noise Enforcement Division (EN-336), U.S. Environmental Protection Agency, Docket No. NED-81-1, Washington, D.C. 20460, (202) 426-4793.

All information received, which is not identified as company proprietary in nature will be open to public inspection and available for copying during normal business hours at the U.S. Environmental Protection Agency, Public Information Reference Unit,

Room 2922, 401 M Street, S.W., Washington, D.C. 20460.

#### FOR FURTHER INFORMATION CONTACT:

Timothy J. Dwyer at (202) 426-4793.

**SUPPLEMENTARY INFORMATION:** On January 14, 1976, EPA promulgated a regulation (40 CFR 204.50, *et seq.*) which established noise emission standards for portable air compressors manufactured on or after January 1, 1978, (41 FR 2162). On April 13, 1978, EPA promulgated a regulation (40 CFR 205.50 *et seq.*) which established noise emission standards for medium and heavy trucks manufactured after January 1, 1978 (41 FR 15538). On December 31, 1980, EPA promulgated regulations (40 CFR 205.150 *et seq.* and 205.165 *et seq.*) establishing noise emission standards for motorcycles and motorcycle replacement exhaust systems manufactured on or after January 1, 1983 (45 FR 86694). On October 1, 1979, EPA promulgated a regulation (40 CFR 205.200 *et seq.*) establishing noise emission standards for truck mounted solid waste compactors manufactured on or after October 1, 1980 (44 FR 56528). On September 28, 1979, EPA promulgated a regulation (40 CFR 211.203 *et seq.*) establishing noise labeling requirements for hearing protectors manufactured on or after September 27, 1980 (44 FR 56130).

Each of these regulations imposes reporting and recordkeeping requirements on the manufacturers of the regulated products, including provisions that manufacturers of regulated products submit production verification reports or labeling verification reports, as appropriate, to the Director of the Noise Enforcement Division.

The President's proposed budget for Fiscal Year 1982, which was submitted to Congress on March 10, 1981, provides for no funding of the noise enforcement program in FY 1982 and indicates that the remainder of 1981 funds will be used to phase out the program by the end of the current fiscal year. Preliminary actions by Congress indicate that this portion of EPA's budget will be enacted as proposed. As the first step in this phase-out process, the Agency is proposing that the reporting and recordkeeping requirements of these regulations be revoked. The Agency is requesting that manufacturers of regulated products immediately stop submitting product verification reports and labeling verification reports to the Director of the Noise Enforcement Division. Between now and September 30, 1981, the Noise Enforcement Division staff and the remaining FY 81 funds will

be used for those activities necessary for closing the Division.

This action affects only the reporting and recordkeeping requirements of the regulations. All other provisions of the regulations promulgated under the Noise Control Act (42 U.S.C. 4901 *et seq.*) remain in effect. Regulated products remain subject, respectively, to the noise emission standards and labeling requirements of the regulations.

Furthermore, although EPA will no longer be requiring manufacturers reports regarding compliance with these regulations, Section 12 of the Noise Control Act (42 U.S.C. 4911), which provides for citizens suits to enforce noise control standards, remains in effect.

EPA has determined that this proposed rulemaking is not a major rule under Executive Order 12291, and therefore does not require a Regulatory Impact Analysis. EPA does not anticipate any significant adverse effects on competition, employment, investment, productivity, or innovation in the regulated industries. This action will result in a significant reduction of the reporting and recordkeeping burdens for the regulated industries.

This proposed rulemaking was submitted to the Office of Management and Budget (OMB) for review under Executive Order 12291.

Under the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, I hereby certify that this proposed action will not have a significant economic impact on a substantial number of small entities. The proposal affects only the recordkeeping and reporting requirements of the regulations; other portions of the regulations are unaffected. Moreover, this proposal will ease recordkeeping and reporting burdens for the effected manufacturers, and will have no adverse economic effects.

This action is being taken under the authority of Sections 10 and Section 13(a) of the Noise Control Act of 1972, as amended by the Quiet Communities Act of 1978, 42 U.S.C. 4909 and 4912(a).

Dated: August 7, 1981.

Anne M. Gorsuch,  
Administrator.

For the reasons set out in the preamble, Chapter I, Part 204 of Title 40, Code of Federal Regulations, is proposed to be amended as follows.

#### PART 204—NOISE EMISSION STANDARDS FOR CONSTRUCTION EQUIPMENT

1. The Table of Contents for Part 204 is amended to read as follows:



**Subpart A—General Provisions****Sec.****204.5 Exemptions.****204.5-1 Testing exemption.****204.5-2 National security exemptions.****204.5-3 Export exemptions.****Subpart B—Portable Air Compressors****204.53 [Removed]****204.55-4 [Removed]****204.55-10 [Removed]****204.57-5 [Removed]****§ 204.4 [Amended]**

2. In § 204.4, paragraph (a) is revised to read as follows:

(a) Any inspection or monitoring activities conducted under this section shall be for the purpose of determining: (1) whether test products are being selected and prepared for testing in accordance with the provisions of these regulations, and (2) whether test product testing is being conducted in accordance with these regulations.

3. In § 202.4, paragraph (b), subparagraph (4) is removed.

4. In § 204.4, paragraph (c)(1), subdivision (iii) is removed.

**§ 204.5-1 [Removed]**

5. Section 204.5-1 is removed.

6. Section 204.5-2 is redesignated § 204.5-1 and revised to read as follows:

**§ 204.5-1 Testing exemption.**

(a) A new product intended to be used solely for research, investigations, studies, demonstrations or training, and so labeled or marked on the outside of the container and on the product itself, shall be exempt from the prohibitions of sections 10(a)(1), (2), (3), and (4) of the Act.

(b) No request for a testing exemption is required.

(c) For purposes of section 11(d) of the Act, any testing exemption shall be void ab initio with respect to each new product, originally intended for research, investigations, studies, demonstrations, or training, but distributed in commerce for other uses.

**§ 204.5-3 [Removed]**

7. Section 204.5-3 is removed.

8. Section 204.5-4 is redesignated § 204.5-2, and is revised to read as follows:

**§ 204.5-2 National security exemptions.**

(a) A new product which is produced to conform with specifications

developed by a national security agency, and so labeled or marked on the outside of the container and on the product itself, shall be exempt from the prohibitions of sections 10(a)(1), (2), (3), and (4) of the Act.

(b) No request for a national security exemption is required.

(c) For purposes of section 11(d) of the Act, any national security exemption shall be void ab initio with respect to each new product, originally intended for research, investigations, studies, demonstrations, or training, but distributed in commerce for other uses.

**§ 204.5-5 [Redesignated as § 204.5-3]**

9. Section 204.5-5 is redesignated § 204.5-3.

**§ 204.5-6 [Removed]**

10. Section 204.5-6 is removed.

**§ 204.5-7 [Removed]**

11. Section 204.5-7 is removed.

**§ 204.53 [Removed]**

12. Section 204.53 is removed.

**§ 204.55-1 [Amended]**

13. In § 204.55-1(a) subparagraph (2) is removed and subparagraphs (3) and (4) are redesignated as (2) and (3).

**§ 204.55-2 [Amended]**

14. In § 204.55-2, paragraph (a)(2), subparagraphs (ii) and (iii) are removed.

15. In § 204.55-2, paragraph (a)(3) is removed.

16. In § 204.55-2, paragraphs (b)(3) and (c)(1)(v) are removed.

17. In § 204.55-2, paragraph (e)(2), the second sentence, which reads, "All modifications and test results must be reported in the production verification report," is removed.

18. In § 204.55-2, paragraph (f) is removed.

**§ 204.55-4 [Removed]**

19. Section 204.55-4 is removed.

**§ 204.55-6 [Amended]**

20. In § 204.55-6, paragraph (c) is amended by substituting a period for the colon and removing the following words after the colon: "Provided, that such maintenance is documented and reported in the final report prepared and submitted in accordance with this subpart."

**§ 204.55-7 [Amended]**

21. In § 204.55-7, paragraph (b), the last sentence, which reads, "Any replacement shall be reported in the production verification report, including the reason for the replacement," is removed.

**§ 204.55-9 [Amended]**

22. In § 204.55-9, paragraph (b)(2) is amended by substituting a period for the colon and removing these words which follow the colon: "Provided, that the manufacturer submits a report pursuant to § 204.55-4 with respect to such configuration."

**§ 204.55-10 [Removed]**

23. Section 204.55-10 is removed.

**§ 204.57-5 [Removed]**

24. Section 204.57-5 is removed.

**§ 204.58-1 [Amended]**

25. In § 204.58-1, paragraphs (b), (c), and (d) are removed.

26. In § 204.58-2, paragraph (a) is revised; paragraphs (b), (c), and (g) are removed; paragraphs (d) and (e) are revised; and paragraphs (d), (e), and (f) are redesignated paragraphs (b), (c), and (d) respectively. The amended § 204.58-2 reads as follows:

**§ 204.58-2 Tampering.**

(a) For each configuration of air compressors covered by this part, the manufacturer shall develop a list of those acts which, in his judgment, might be done to the air compressor in use and which would constitute the removal or rendering inoperative of noise control devices or elements of design of the compressor.

(b) The manufacturer shall include in the owner's manual the following information:

(1) The statement:

**Tampering With Noise Control System Prohibited**

Federal law prohibits the following acts or the causing thereof:

(1) The removal or rendering inoperative by any persons, other than for purposes of maintenance, repair, or replacement, of any devices or element of design incorporated into any new compressor for the purpose of noise control prior to its sale or delivery to the ultimate purchaser or while it is in use; or (2) the use of the compressor after such device or element of design has been removed or rendered inoperative by any person.

(2) The statement:

Among those acts included in the prohibition against tampering are the acts listed below.

Immediately following this statement, the manufacturer shall include the list developed under paragraph (a) of this section.

(c) Any act included in the list prepared pursuant to paragraph (a) of this section is presumed to constitute tampering; however, in any case in which a proscribed act has been committed and it can be shown that such act resulted in no increase in the



sound level of the compressor or that the compressor still meets the noise emission standard of § 204.52, such set will not constitute tampering.

#### § 204.58-3 [Amended]

27. In § 204.58-3, paragraphs (c), (d), and (e) are removed.

### PART 205—TRANSPORTATION EQUIPMENT NOISE EMISSION CONTROLS

1. The Table of Contents is amended as follows:

#### Subpart A—General Provisions

Sec  
205.5 [Removed]  
205.5-1 [Removed]  
205.5-2 [Removed]  
205.5-3 [Removed]

205.5-6 [Removed]  
205.5-7 [Removed]

#### Subpart B—Medium and Heavy Trucks

205.53 [Removed]  
205.55-4 [Removed]  
205.55-9 [Removed]  
205.57-5 [Removed]

#### Subpart D—Motorcycles

205.157-4 [Removed]  
205.160-5 [Removed]  
205.161 [Removed]  
205.162-4 [Removed]

#### Subpart E—Motorcycle Exhaust Systems

205.168-3 [Removed]  
205.171-7 [Removed]  
205.172 [Removed]  
205.173-5 [Removed]

#### Subpart F—Truck Mounted Solid Waste Compactors

205.203 [Removed]  
205.205-4 [Removed]

205.207-5 [Removed]

#### § 205.4 [Amended]

2. In § 205.4, paragraph (a) is revised to read as follows:

(a) Any inspection or monitoring activities conducted under this section shall be for the purpose of determining: (1) whether test products are being selected and prepared for testing in accordance with the provisions of these regulations, and (2) whether test product testing is being conducted in accordance with these regulations.

3. In § 205.4, paragraph (b), subparagraph (4) is removed.

4. In § 205.4, paragraph (c)(1), subdivision (iii) is removed.

#### § 205.5-1 [Removed]

5. Section 205.5-1 is removed.

6. Section 205.5-2 is redesignated § 205.5-1 and revised to read as follows:

#### § 205.5-1 Testing exemption.

(a) A new product intended to be used solely for research, investigations, studies, demonstrations or training, and so labeled or marked on the outside of the container and on the product itself, shall be exempt from the prohibitions of section 10(a) (1), (2), (3), and (4) of the Act.

(b) No request for a testing exemption is required.

(c) For purposes of section 11(d) of the Act, any testing exemption shall be void ab initio with respect to each new product, originally intended for research, investigations, studies, demonstrations, or training, but distributed in commerce for other uses.

#### § 205.5-3 [Removed]

7. Section 205.5-3 is removed.

8. Section 205.5-4 is redesignated § 205.5-2, and is revised to read as follows:

#### § 205.5-2 National security exemptions.

(a) A new product which is produced to conform with specifications developed by a national security agency, and so labeled or marked on the outside of the container and on the product itself, shall be exempt from the prohibitions of section 10(a) (1), (2), (3), and (4) of the Act.

(b) No request for a national security exemption is required.

(c) For purposes of section 11(d) of the Act, any national security exemption shall be void ab initio with respect to each new product, originally intended for research, investigations, studies, demonstrations, or training, but distributed in commerce for other uses.

#### § 205.5-5 [Amended and Redesignated]

9. Section 205.5-5 is redesignated § 205.5-3 and paragraph (d) is removed.

#### § 205.5-6 [Removed]

10. Section 205.5-6 is removed.

#### § 205.5-7 [Removed]

11. Section 205.5-7 is removed.

#### § 205.53 [Removed]

12. Section 205.53 is removed.

#### § 205.55-1 [Amended]

13. In § 205.55-1, paragraph (a), subparagraph (2) is removed.

#### § 205.55-2 [Amended]

14. In § 205.55-2, paragraph (a)(2), subparagraphs (ii) and (iii) are removed.

15. In § 205.55-2, paragraph (a), subparagraph (3) is removed.

16. In § 205.55-2, paragraph (b), subparagraph (3) is removed.

17. In § 205.55-2, paragraph (c), subparagraph (1)(v), is removed.

18. In § 205.55-2, paragraph (e)(2), the second sentence, which reads, "All modifications and test results must be reported in the production verification report," is removed.

19. In § 205.55-2, paragraph (f) is removed.

#### § 205.55-4 [Removed]

20. Section 205.55-4 is removed.

#### § 205.55-6 [Amended]

21. In § 205.55-6, paragraph (c) is amended by substituting a period for the colon and removing the following words after the colon: "Provided, that such maintenance is documented and reported in the final report prepared and submitted in accordance with this subpart."

#### § 205.55-7 [Amended]

22. In § 205.55-7, paragraph (b), the last sentence, which reads, "Any replacement shall be reported in the production verification report, including the reason for the replacement," is removed.

#### § 205.55-8 [Amended]

23. In § 205.55-8, paragraph (b)(2) is amended by substituting a period for the colon and removing these words which follow the colon: "Provided, that the manufacturer submits a report pursuant to § 205.55-4 with respect to such configuration."

#### § 204.55-9 [Removed]

24. Section 204.55-9 is removed.

#### § 205.57-5 [Removed]

25. Section 205.57-5 is removed.



**§205.58-1 [Amended]**

26. In § 205.58-1, paragraphs (b), (c), and (d) are removed.

27. In § 205.58-2, paragraph (a) is revised; paragraphs (b), (c), and (g) are removed; paragraphs (d) and (e) are revised and redesignated as paragraphs (b) and (c) respectively; paragraph (f) is redesignated paragraph (d). The amended § 205.58-2 reads as follows:

**§205.58-2 Tampering.**

(a) For each configuration of vehicles covered by this part, the manufacturer shall develop a list of those acts which, in his judgment, might be done to the vehicle in use and which would constitute the removal or rendering inoperative of noise control devices or elements of design of the vehicle.

(b) The manufacturer shall include in the owner's manual the following information:

**(1) The statement:****Tampering With Noise Control System Prohibited**

Federal law prohibits the following acts or the causing thereof:

(1) The removal or rendering inoperative by any person, other than for purposes of maintenance, repair, or replacement, of any device or element of design incorporated into any new vehicle for the purpose of noise control prior to its sale or delivery to the ultimate purchaser or while it is in use; or (2) the use of the vehicle after such device or element of design has been removed or rendered inoperative by any person.

**(2) The statement:**

Among those acts presumed to constitute tampering are the acts listed below.

Immediately following this statement, the manufacturer shall include the list developed under paragraph (a) of this section.

(c) Any act included in the list prepared pursuant to paragraph (a) of this section is presumed to constitute tampering; however, in any case in which a proscribed act has been committed and it can be shown that such act resulted in no increase in the noise level of the vehicle or that the vehicle still meets the noise emission standard of § 205.52, such act will not constitute tampering.

**§205.58-3 [Amended]**

28. In § 205.58-3, paragraphs (c), (d), and (e) are removed.

**§205.157-1 [Amended]**

29. In § 205.157-1, paragraph (a), subparagraph (2) is removed.

30. In § 205.157-1, paragraph (d) is revised to read as follows:

(d) The manufacturer who is required to conduct product verification testing to demonstrate compliance with a

particular standard, must satisfy all other provisions of this subpart applicable to that standard.

**§ 205.157-2 [Amended]**

31. In § 205.157-2, paragraph (a)(2), subparagraphs (ii) and (iii) are removed.

32. In § 205.157-2, paragraph (b), subparagraph (3) is removed.

33. In § 205.157-2, paragraph (c)(1), subparagraph (v) is removed.

34. In § 205.157-2, paragraph (e), subparagraph (2) is amended by removing the second sentence.

35. In § 205.157-2, paragraph (f) is removed.

**§205.157-4 [Removed]**

36. Section 205.157-4 is removed.

**§205.157-6 [Amended]**

37. In § 205.157-6, paragraph (d), the last sentence, which reads "This maintenance must be documented and reported in the PV report on that vehicle's configuration prepared and submitted by the manufacturer," is removed.

**§205.157-76 [Amended]**

38. In § 205.157-7, paragraph (c), the last sentence, which reads, "Any replacement must be reported in the production verification report, including the reason for the replacement" is removed.

**§205.157-8 [Amended]**

39. In § 205.157-8, paragraph (b), subparagraph (2) is removed.

**§ 205.157-9 [Amended]**

40. In § 205.157-9, paragraph (b) is removed.

**§ 205.158 [Amended]**

41. In § 205.158, paragraph (e) is removed.

**§ 205.160-5 [Removed]**

42. Section 205.160-5 is removed.

**§ 205.161 [Removed]**

43. Section 205.161 is removed.

**§ 205.162-1 [Amended]**

44. In § 205.162-1, paragraphs (b), (c), and (d) are removed.

45. In § 205.162-2, paragraph (a) is revised; paragraphs (b) and (c) are removed; paragraphs (d) and (e) are revised and redesignated paragraphs (b) and (c) respectively; paragraph (g) is removed; and paragraph (f) is redesignated paragraph (d). The amended § 205.162-2 reads as follows:

**§ 205.162-2 Tampering.**

(a) For each configuration of vehicles covered by this part, the manufacturer shall develop a list of acts which, in his

judgment, constitute the removal or rendering totally or partially inoperative, other than for purposes of maintenance, repair, or replacement of noise control devices or elements of design of the vehicle.

(b) The manufacturer shall include in the owner's manual the following information:

**(1) The statement:****Tampering With Noise Control System Prohibited**

Federal law prohibits the following acts or the causing thereof:

(1) The removal or rendering inoperative by any person other than for purposes of maintenance, repair, or replacement, of any device or element of design incorporated into any new vehicle for the purpose of noise control prior to its sale or delivery to the ultimate purchaser or while it is in use, or (2) the use of the vehicle after such device or element of design has been removed or rendered inoperative by any person.

**(2) The statement:**

Among those acts presumed to constitute tampering are the acts listed below.

Immediately following this statement, the manufacturer must include the list developed under paragraph (a) of this section.

(c) Any act included in the list prepared pursuant to paragraph (a) of this section is presumed to constitute tampering; however, in any case in which a presumed act of tampering has been committed and it can be shown that such act resulted in no increase in the noise level of the vehicle or that the vehicle still meets the noise emission standard of § 205.152, the act will not constitute tampering.

**§ 205.162-3 [Amended]**

46. In § 205.162-3, paragraphs (c), (d), and (e) are removed.

**§ 205.162-4 [Removed]**

47. Section 205.162-4 is removed.

48. In § 205.168-1, paragraph (a), subparagraph (2) is removed.

49. In § 205.168-1, paragraph (b) is revised to read as follows:

**§ 205.168-1 General requirements**

(b) The manufacturer who is required to conduct product verification testing to demonstrate compliance with a particular standard, must satisfy all other provisions of this subpart applicable to that standard.

**§ 205.168-2 [Amended]**

50. In § 205.168-2, paragraph (a)(2), subdivisions (ii) and (iii) are removed.

51. In § 205.168-2, paragraph (a), subparagraph (3) is removed.



52. In § 205.168-2, paragraph (b), subparagraph (3) is removed.

53. In § 205.168-2, paragraph (f), subparagraph (2), the second sentence, which reads, "All modifications and test results must be reported in the production verification report," is removed.

54. In § 205.158-2, paragraph (g) is removed.

**§ 205.168-3 [Removed]**

55. Section 205.168-3 is removed.

**§ 205.168-7 [Amended]**

56. In § 205.168-7, paragraph (c), the last sentence, which reads, "This maintenance must be documented and reported in the final report prepared and submitted in accordance with this subpart," is removed.

**§ 205.168-8 [Amended]**

57. In § 205.168-8, paragraph (c), the last sentence, which reads, "Any replacement must be reported in the production verification report, including the reason for the replacement," is removed.

58. In § 205.168-10, paragraph (b) is revised to read as follows:

**§ 205.168-10 Production verification based on data from previous model years.**

(b) For those configurations whose initial PV noise emission level is less than 2 dB below the standard in effect, production verification will be required when production of that configuration commences each model year, except as provided in paragraph (c) of this section.

**§ 205.169 [Amended]**

59. In § 205.169, paragraph (f) is removed.

**§ 205.171-7 [Removed]**

60. Section 205.171-7 is removed.

**§ 205.172 [Removed]**

61. Section 205.172 is removed.

**§ 205.173-1 [Amended]**

62. In § 205.173-1, paragraphs (b) and (c) are removed.

**§ 205.173-5 [Removed]**

63. Section 205.173-5 is removed.

**§ 205.203-5 [Removed]**

64. Section 205.203 is removed.

**§ 205.205-5 [Amended]**

65. In § 205.205-1, paragraph (a), subparagraph (2) is removed.

**§ 205.205-2 [Amended]**

66. In § 205.205-2, paragraph (a)(2), subdivisions (ii) and (iii) are removed.

67. In § 205.205-2, paragraph (3) is removed.

68. In § 205.205-2, paragraph (b), subparagraph (3) is removed.

69. In § 205.205-2, paragraph (f) is removed.

**§ 205.205-4 [Removed]**

70. Section 205.205-4 is removed.

**§ 205.205-6 [Amended]**

71. In § 205.205-6, paragraph (c), the last sentence, which reads, "This maintenance must be documented and reported in the final report prepared and submitted in accordance with this subpart," is removed.

**§ 205.205-7 [Amended]**

72. In § 205.205-7, paragraph (c), the last sentence, which reads, "Any replacement must be reported in the production verification report along with the reason for the replacement," is removed.

73. In § 205.205-8, paragraph (b) is revised to read as follows:

**§ 205.205-8 Addition of changes to, and deviation from a compactor configuration during the year.**

(b) If the configuration to be added can be grouped within a verified category, and the new configuration is estimated to have a lower A-weighted noise level than a previously verified configuration within the same category, the configuration is to be considered verified.

74. Section 205.205-9 is revised, including the heading to read as follows:

**§ 205.205-9 Production verification based on data from previous years.**

(a) Production verification of each configuration will not be required for subsequent model years when the manufacturer's initial production verification noise emission level is at least 2 dB below the noise emission standard and when the manufacturer has not made any changes (which increase the noise emission level) to the noise control components or elements of design used on that configuration.

(b) Production verification of each configuration will be required for those model years when a more stringent noise emission standard becomes effective.

**§ 205.207-5 [Removed]**

75. Section 205.207-5 is removed.

76. Section 205.208-2, paragraph (a) revised; paragraphs (b) and (c) are removed; paragraphs (d) and (e) are revised and redesignated paragraphs (b) and (c); paragraph (h) is removed; and paragraphs (f) and (g) are redesignated

(d) and (e) respectively. The revised § 205.208-2 reads as follows:

**§ 205.208-2 Tampering.**

(a) For each configuration of compactor covered by this part, the manufacturer shall develop a list of those acts which, in his judgment, might be done to the compactor in use and which would constitute the removal or rendering inoperative of noise control devices or elements of design of the compactor.

(b) The manufacturer shall include in the owner's manual the following information:

(1) The statement:

**Tampering With Noise Control System Prohibited**

Federal law prohibits the following acts or the causing thereof:

(1) The removal or rendering inoperative by any person, other than for purposes of maintenance, repair, or replacement, of any device or element of design incorporated into any new compactor for the purpose of noise control prior to its sale or delivery to the ultimate purchaser or while it is in use; or (2) the use of the compactor after such device or element or design has been removed or rendered inoperative by any person.

(2) The statement:

Among those acts presumed to constitute tampering are the acts listed below.

Immediately following this statement, the manufacturer shall include the list developed under paragraph (a) of this section.

(c) Any act included in the list prepared pursuant to paragraph (a) of this section is presumed to constitute tampering; however, in any case in which a prescribed act has been committed and it can be shown that such act resulted in no increase in the noise level of the vehicle or that the vehicle still meets the noise emission standard of § 205.202, such act will not constitute tampering.

(d) Manufacturers who only assemble compactors need not fulfill the requirements of paragraphs (a) and (b) of this section. Such manufacturers shall provide ultimate purchasers of their compactors with the tampering list developed by the compactor body manufacturer under paragraph (a) of this section for that particular compactor body and truck chassis combination. When such manufacturers of compactors are required to comply with § 204.205-4(a)(1) and (2) of this subpart, they shall fulfill the requirements of paragraph (a) and (b), of this section.

77. In § 205.208-3, paragraphs (c), (d), and (f) are removed; paragraph (e) is redesignated (c) and is revised to read as follows:



**§ 205.208-3 Instructions for maintenance, use, and repair.**

(c) Manufacturers who only assemble compactors are not required to fulfill the requirements of paragraphs (a) and (b) of this section. Such manufacturers shall provide the maintenance instructions and log book developed by the compactor body manufacturer for that particular compactor body and chassis combination. When such manufacturers are required to comply with § 204.205-4(a)(1) and (2) of this subpart, they shall fulfill the requirements of paragraphs (a) and (b) of this section.

**PART 211—PRODUCT NOISE LABELING**

1. The table of Contents is amended to read as follows:

**Subpart A—General Provisions**

**Sec.**

211.110 Exemptions.

211.110-1 Testing exemption.

211.110-2 National security exemptions.

211.110-3 Export exemptions.

211.110-4 [Removed]

211.110-5 [Removed]

211.111 Testing by the Administrator.

**Subpart B—Hearing Protective Devices**

211.205 Special Claims.

211.209 [Removed]

211.210-3 [Removed]

211.212-5 [Removed]

Appendix A [Removed]

Appendix B [Removed]

**§ 211.109 [Amended]**

2. In § 211.109, paragraph (a), subparagraph (1) is removed.

3. In § 211.109, paragraph (b), subparagraph (4) is removed.

4. In § 211.109, paragraph (c)(1), subdivision (iii) is removed.

5. Section 211.210-1 is revised to read as follows:

**§ 211.210-1 Testing exemption.**

(a) A new product intended to be used solely for research, investigations, studies, demonstrations or training, and so labeled or marked on the outside of the container and on the product itself, shall be exempt from the prohibitions of sections 10(a), (1), (2), (3), and (4) of the Act.

(b) No request for a testing exemption is required.

(c) For purposes of section 11(d) of the Act, any testing exemption shall be void ab initio with respect to each new

product, originally intended for research, investigations, studies, demonstrations, or training, but distributed in commerce for other uses.

6. Section 211.110-2 is revised to read as follows:

**§ 211.110-2 National security exemptions.**

(a) A new product which is produced to conform with specifications developed by a national security agency, and so labeled or marked on the outside of the container and on the product itself, shall be exempt from the prohibitions of sections 10(a), (1), (2), (3), and (4) of the Act.

(b) No request for a national security exemption is required.

(c) For purposes of section 11(d) of the Act, any national security exemption shall be void ab initio with respect to each new product, originally intended for a national security agency, but distributed in commerce for other uses.

**§ 211.110-3 [Amended]**

7. In § 211.110-3, paragraph (d) is removed.

**§ 211.110-4 [Removed]**

8. Section 211.110-4 is removed.

**§ 211.110-5 [Removed]**

9. Section 211.110-5 is removed.

**§ 211.205 [Amended]**

10. In § 211.205, paragraphs (b) and (c) are removed.

**§ 211.209 [Amended]**

11. Section 211.209 is removed.

**§ 211.210-1 [Amended]**

12. In § 211.210-1, paragraph (a), subparagraph (2) is removed and subparagraphs (3) and (4) are redesignated (2) and (3) respectively.

13. In § 211.210-2, paragraph (a), subparagraph (1) is revised; subparagraph (2) is removed; and subparagraph (3) is redesignated subparagraph (2). Paragraph (a)(1) is revised to read:

**§ 211.210-2 Labeling verification requirements.**

(a)(1) A manufacturer responsible for label verification must satisfy the label verification requirements of this subpart for a category of hearing protectors before distributing that category of hearing protectors in commerce.

14. In § 211.210-2, paragraph (b), subparagraph (2) is removed.

15. In § 211.210-2, paragraph (d) is removed.

**§ 211.210-3 [Removed]**

16. Section 211.210-3 is removed.

**§ 211.210-6 [Amended]**

17. In § 211.210-6, paragraph (b), the last sentence, which reads, "Any replacement must be reported in the labeling verification report, including the reason for replacement," is removed.

18. Section 211.211 is revised to read as follows:

**§ 211.211 Compliance with labeling requirement.**

(a) All hearing protective devices manufactured after the effective date of this regulation, and meeting the applicability requirements of § 211.201, must be labeled according to this subpart, and must comply with the Labeled Values of mean attenuation.

(b) A manufacturer must take into account both product variability and test-to-test variability when labeling his devices in order to meet the requirements of paragraph (a) of this section. A specific category is considered in compliance with the requirements of § 211.210-1, when the attenuation value at the tested one-third octave band is equal to or greater than the Labeled Value, or mean attenuation value, stated in the supporting information required by § 211.204-4, for that tested frequency. The attenuation value must be determined according to the test procedures of § 211.206. The Noise Reduction Rating for the label must be calculated using the Labeled Values of mean attenuation that will be included in the supporting information required by § 211.204-4.

**§ 211.212-4 [Amended]**

19. In § 211.212-4, paragraph (b), the last sentence, which reads, "Any replacement and the reason for replacement must be reported in the compliance audit test report," is removed.

**§ 211.212-5 [Removed]**

20. Section 211.212-5 is removed.

21. Section 211.212-6, paragraph (a) is revised to read as follows:

**§ 211.212-6 Determination of compliance.**

(a) A category will be in compliance with these requirements if the results of the test conducted under the test request, show that:

(1) The mean attenuation value, at each one-third octave band center frequency as determined from the Compliance Audit Test values plus 3 dB(a), is equal to or greater than the mean attenuation value at the same one-third octave band as stated in the Supporting Information required by § 211.204-4; and

(2) The Noise Reduction Rating, when calculated from the mean attenuation



values determined by Compliance Audit Testing, equals or exceeds the Noise Reduction Rating as stated on the label required by § 211.204.

#### Appendix A- [Removed]

22. Appendix A is removed.

#### Appendix B- [Removed]

23. Appendix B is removed.

[FR Doc. 81-23611 Filed 8-13-81; 8:45 am]

BILLING CODE 6560-33-M

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### 44 CFR Part 67

[Docket No. FEMA-6124]

### National Flood Insurance Program; Proposed Flood Elevation Determinations; Arizona, et al.

**AGENCY:** Federal Insurance  
Administration, FEMA.

**ACTION:** Proposed Rule.

**SUMMARY:** Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the nation. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect

in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

**DATE:** The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

**ADDRESSES:** See table below.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert G. Chappell, P.E., National Flood Insurance Program, (202) 755-5585, Federal Emergency Management Agency, Washington, D.C. 20472.

**SUPPLEMENTARY INFORMATION:** The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for selected locations in the nation, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 44 CFR 67.4 (a).

These elevations, together with the flood plain management measures required by Section 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The

community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or Regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

Pursuant to the provisions of 5 USC 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under Section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the floodplain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts floodplain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the floodplain and do not prescribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

The proposed base (100-year) flood elevations for selected locations are:

### Proposed Base (100-Year) Flood Elevations

| State   | City/town/county                 | Source of flooding     | Location                                                                                                  | #Depth in feet above ground.<br>*Elevation in feet (NGVD) |
|---------|----------------------------------|------------------------|-----------------------------------------------------------------------------------------------------------|-----------------------------------------------------------|
| Arizona | Flagstaff (City) Coconino County | Rio de Flag            | Most downstream intersection of Rio de Flag and centerline of Interstate Highway 40.                      | *6765                                                     |
|         |                                  |                        | Intersection of Hopi Drive and Navajo Drive.                                                              | *6835                                                     |
|         |                                  |                        | Intersection of Rio de Flag and center of O'Leary Street.                                                 | *6886                                                     |
|         |                                  |                        | Intersection of Rio de Flag and center of Crescent Drive.                                                 | *6969                                                     |
|         |                                  |                        | 100 feet upstream from center of Fremont Boulevard.                                                       | *7090                                                     |
|         |                                  | Rio de Flag Spill Flow | Intersection of Thorpe Road and Bonito Street.                                                            | *6933                                                     |
|         |                                  | Penstock Avenue Wash   | 100 feet upstream from center of Railroad Avenue.                                                         | *6787                                                     |
|         |                                  |                        | 50 feet upstream from center of Allen Avenue.                                                             | *6835                                                     |
|         |                                  | Peaceful Valley Wash   | Intersection of Peaceful Valley Wash and center of Oakmont Drive.                                         | *6765                                                     |
|         |                                  | Country Club Wash      | Intersection of Country Club Wash and center of Country Club Drive.                                       | *6777                                                     |
|         |                                  | Fanning Drive Wash     | Intersection of Fanning Drive Wash and center of Interstate Highway 40 west bound lane.                   | *6782                                                     |
|         |                                  |                        | 150 feet north from intersection of Linda Vista Drive and Schevene Boulevard.                             | *6984                                                     |
|         |                                  | Switzer Canyon Wash    | Intersection of Switzer Canyon Wash and Butler Avenue.                                                    | *6785                                                     |
|         |                                  |                        | 150 feet south of intersection of Switzer Canyon Wash and center of Huntington Drive.                     | *6838                                                     |
|         |                                  |                        | Intersection of Switzer Canyon Wash and center of Switzer Drive.                                          | *6868                                                     |
|         |                                  | Spruce Avenue Wash     | 40 feet upstream from intersection of Third Street and Sixth Avenue Wash and center of Linda Vista Drive. | *6876                                                     |
|         |                                  |                        | Intersection of Spruce Avenue Wash and center of Linda Vista Drive.                                       | *6962                                                     |
|         |                                  |                        | 850 feet north-northwest from intersection of Paradise Road and Park Way.                                 | #1                                                        |



## Proposed Base (100-Year) Flood Elevations—Continued

| State                                                                                                                                                                                                       | City/town/county                      | Source of flooding          | Location                                                                                                                               | #Depth in feet above ground. *Elevation in feet (NGVD) |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------|-----------------------------|----------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------|
|                                                                                                                                                                                                             |                                       | West Street Wash            | Intersection of West Street Wash and center of Santa Fe Avenue.<br>100 feet upstream from center of North High School Driveway.        | *8639<br>*8925                                         |
|                                                                                                                                                                                                             |                                       | West Street Wash Split Flow | Intersection of West Street Wash Split Flow and center of First Avenue.                                                                | *8850                                                  |
|                                                                                                                                                                                                             |                                       | Bow and Arrow Wash          | 200 feet upstream from confluence with Rio de Flag                                                                                     | *6799                                                  |
|                                                                                                                                                                                                             |                                       |                             | 50 feet upstream from center of Lake Mary Road                                                                                         | *6928                                                  |
|                                                                                                                                                                                                             |                                       | Sinclair Wash               | Intersection of Sinclair Wash and O'Leary Street                                                                                       | *6851                                                  |
|                                                                                                                                                                                                             |                                       |                             | 100 feet upstream from center of University Heights Drive South.                                                                       | *6891                                                  |
|                                                                                                                                                                                                             |                                       | Clay Avenue Wash            | Intersection of Clay Avenue and Laroux Street                                                                                          | *6892                                                  |
|                                                                                                                                                                                                             |                                       |                             | 170 feet upstream from center of Alchison, Topeka, and Santa Fe Railroad.                                                              | *7022                                                  |
|                                                                                                                                                                                                             |                                       | Clay Avenue Wash Split Flow | Confluence with Clay Avenue Wash                                                                                                       | *6956                                                  |
|                                                                                                                                                                                                             |                                       | Peak View Wash              | Intersection of Peak View Wash and center of Red Rock Street.                                                                          | *7110                                                  |
| Maps available for inspection at Department of Engineering, 15 North Beaver Street, Flagstaff, Arizona.<br>Send comments to the Honorable Paul Babbitt, 120 North Beaver Street, Flagstaff, Arizona 86001.  |                                       |                             |                                                                                                                                        |                                                        |
| Arizona                                                                                                                                                                                                     | Navajo County, (Unincorporated Areas) | Billy Creek                 | 30 feet upstream from center of Peterson Road crossing.                                                                                | *6707                                                  |
|                                                                                                                                                                                                             |                                       | Black Canyon Wash           | At the intersection of State Highway 260 and Black Canyon Wash.                                                                        | *6439                                                  |
|                                                                                                                                                                                                             |                                       | Buckskin Wash               | 50 feet upstream from center of State Highway 260 crossing.                                                                            | *6431                                                  |
|                                                                                                                                                                                                             |                                       | Little Colorado River       | At the intersection of Interstate Highway 40 and Little Colorado River (vicinity of Winslow).                                          | *4855                                                  |
|                                                                                                                                                                                                             |                                       |                             | At the intersection of Canary Avenue and Little Colorado River (vicinity of Woodruff).                                                 | *5159                                                  |
|                                                                                                                                                                                                             |                                       | Pinedale Wash               | At the intersection of Pinedale Road and Pinedale Wash.                                                                                | *6408                                                  |
|                                                                                                                                                                                                             |                                       | Porter Canyon Draw          | 50 feet upstream from center of McLaws Road crossing.                                                                                  | *5073                                                  |
|                                                                                                                                                                                                             |                                       | Silver Creek                | At the intersection of Shumway Road and Silver Creek                                                                                   | *5672                                                  |
|                                                                                                                                                                                                             |                                       | Show Low Creek              | 1,070 feet upstream from confluence with Meadow View Wash, at the intersection of Show Low Creek and City of Show Low corporate limit. | *6346                                                  |
|                                                                                                                                                                                                             |                                       | Town Wash                   | At the intersection of Old State Highway 260 and Town Wash.                                                                            | *6306                                                  |
|                                                                                                                                                                                                             |                                       | Walnut Gulch Creek          | At the intersection of Nadean Drive and Walnut Gulch Creek.                                                                            | *6937                                                  |
|                                                                                                                                                                                                             |                                       | Whiting Creek               | 30 feet downstream from center of McLaws Road crossing.                                                                                | *5095                                                  |
|                                                                                                                                                                                                             |                                       |                             | 30 feet upstream from center of McLaws Road crossing.                                                                                  | *5097                                                  |
| Maps available for inspection at Department of Planning and Building, South Highway 77, Holbrook, Arizona.<br>Send comments to the Honorable John Butler, South Highway 77, Holbrook, Arizona 86025.        |                                       |                             |                                                                                                                                        |                                                        |
| California                                                                                                                                                                                                  | Yuba County (Unincorporated Areas)    | Feather River               | Intersection of river and center of Southern Pacific Railroad.                                                                         | *73                                                    |
|                                                                                                                                                                                                             |                                       | Yuba River                  | 200 feet west along Walnut Avenue from intersection with Hollywood Boulevard.                                                          | *68                                                    |
|                                                                                                                                                                                                             |                                       | Jack-Simmerly Slough        | Intersection of Simmerly Slough and center of Woodruff Lane.                                                                           | *74                                                    |
|                                                                                                                                                                                                             |                                       | Linda Drain                 | 50 feet northeast along Grand Avenue from the intersection with Western Pacific Railroad.                                              | *58                                                    |
|                                                                                                                                                                                                             |                                       |                             | Intersection of drain and center of McGowan Parkway                                                                                    | *60                                                    |
|                                                                                                                                                                                                             |                                       |                             | 150 feet north from intersection of Linda-Hurst Road and Sharp Avenue.                                                                 | *62                                                    |
|                                                                                                                                                                                                             |                                       |                             | 100 feet upstream from center of North Beale Road                                                                                      | *70                                                    |
|                                                                                                                                                                                                             |                                       |                             | Intersection of North Beale Road and Widget Avenue                                                                                     | *2                                                     |
|                                                                                                                                                                                                             |                                       |                             | Intersection of Linda-Hurst Road and Sharp Avenue                                                                                      | *1                                                     |
|                                                                                                                                                                                                             |                                       | Olivehurst Drain            | 100 feet upstream from center of Southern Pacific Railroad.                                                                            | *83                                                    |
|                                                                                                                                                                                                             |                                       | Plumas Lake                 | 100 feet southeast from the intersection of McGowan Parkway and Rancho Road.                                                           | *60                                                    |
| Maps available for inspection at County Department of Public Works, 215 5th Street, Marysville, California.<br>Send comments to the Honorable Charles Parker, 215 5th Street, Marysville, California 95901. |                                       |                             |                                                                                                                                        |                                                        |
| Connecticut                                                                                                                                                                                                 | Wilton, Town, Fairfield County        | Norwalk River               | Downstream Corporate Limits                                                                                                            | *123                                                   |
|                                                                                                                                                                                                             |                                       |                             | Upstream P & E Bridge                                                                                                                  | *141                                                   |
|                                                                                                                                                                                                             |                                       |                             | Upstream Wolpit Road                                                                                                                   | *158                                                   |
|                                                                                                                                                                                                             |                                       |                             | Confluence of Comstock Brook                                                                                                           | *186                                                   |
|                                                                                                                                                                                                             |                                       |                             | Upstream State Route 7 (First Crossing)                                                                                                | *208                                                   |
|                                                                                                                                                                                                             |                                       |                             | Upstream Cannon Road                                                                                                                   | *226                                                   |
|                                                                                                                                                                                                             |                                       |                             | Upstream Seely Road                                                                                                                    | *245                                                   |
|                                                                                                                                                                                                             |                                       |                             | Downstream Old Mill Road                                                                                                               | *271                                                   |
|                                                                                                                                                                                                             |                                       |                             | Approximately 3,400' upstream of Old Mill Road                                                                                         | *303                                                   |
|                                                                                                                                                                                                             |                                       |                             | Approximately 420' downstream of Old U.S. Route 7                                                                                      | *334                                                   |
|                                                                                                                                                                                                             |                                       |                             | Upstream Corporate Limits                                                                                                              | *344                                                   |
|                                                                                                                                                                                                             |                                       | Comstock Brook              | Confluence with Norwalk River                                                                                                          | *186                                                   |
|                                                                                                                                                                                                             |                                       |                             | Upstream of Lovers Lane                                                                                                                | *231                                                   |
|                                                                                                                                                                                                             |                                       |                             | Upstream of Fitzgerald Road                                                                                                            | *263                                                   |
|                                                                                                                                                                                                             |                                       |                             | Downstream of Middlebrook Farm Road                                                                                                    | *310                                                   |
|                                                                                                                                                                                                             |                                       |                             | Upstream of Nodhill Road                                                                                                               | *344                                                   |



## Proposed Base (100-Year) Flood Elevations—Continued

| State                                                                                                                                           | City/town/county              | Source of flooding            | Location                                                                                        | #Depth in feet above ground. *Elevation in feet (NGVD) |
|-------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------|-------------------------------|-------------------------------------------------------------------------------------------------|--------------------------------------------------------|
|                                                                                                                                                 |                               | West Branch Saugatuck River   | Approximately 3,600' upstream of Nodhill Road                                                   | *363                                                   |
|                                                                                                                                                 |                               |                               | Approximately 7,150' upstream of Nodhill Road                                                   | *425                                                   |
|                                                                                                                                                 |                               |                               | Downstream Corporate Limits                                                                     | *91                                                    |
|                                                                                                                                                 |                               |                               | First Footbridge (Downstream)                                                                   | *109                                                   |
|                                                                                                                                                 |                               |                               | Downstream Abandoned Bridge                                                                     | *130                                                   |
|                                                                                                                                                 |                               |                               | Upstream State Route 53                                                                         | *145                                                   |
|                                                                                                                                                 |                               | East Branch Silvermine River  | Upstream Corporate Limits                                                                       | *159                                                   |
|                                                                                                                                                 |                               |                               | Approximately 200' upstream of upstream Corporate Limits                                        | *161                                                   |
|                                                                                                                                                 |                               |                               | Downstream Corporate Limits                                                                     | *489                                                   |
|                                                                                                                                                 |                               |                               | Upstream Bald Hill Road                                                                         | *516                                                   |
|                                                                                                                                                 |                               |                               | Downstream Snowberry Lane                                                                       | *547                                                   |
|                                                                                                                                                 |                               |                               | Upstream Corporate Limits                                                                       | *561                                                   |
| Maps available for inspection at the Wilton Town Clerk's Office, Wilton, Connecticut.                                                           |                               |                               |                                                                                                 |                                                        |
| Send comments to Rosemary Verill, First Selectwoman of Wilton, Wilton, Connecticut 06897.                                                       |                               |                               |                                                                                                 |                                                        |
| Illinois                                                                                                                                        | (C) Belvidere, Boone County   | Kishwaukee River              | At the confluence of Tributary A                                                                | *753                                                   |
|                                                                                                                                                 |                               |                               | Approximately 250 feet upstream of Main Street                                                  | *761                                                   |
|                                                                                                                                                 |                               |                               | At the upstream corporate limits                                                                | *764                                                   |
|                                                                                                                                                 |                               | Tributary A                   | At the confluence with Kishwaukee River                                                         | *753                                                   |
|                                                                                                                                                 |                               |                               | Just upstream of Newburg Road                                                                   | *757                                                   |
|                                                                                                                                                 |                               |                               | Approximately 200 feet downstream of the downstream Chicago and North Western railroad crossing | *757                                                   |
|                                                                                                                                                 |                               |                               | Approximately 1000 feet upstream of the downstream Chicago and North Western railroad crossing  | *768                                                   |
|                                                                                                                                                 |                               |                               | Approximately 50 feet downstream of the upstream Chicago and North Western railroad crossing    | *775                                                   |
|                                                                                                                                                 |                               |                               | Approximately 200 feet upstream of Stone Quarry Road                                            | *781                                                   |
|                                                                                                                                                 |                               |                               | Just downstream of East Chrysler Drive                                                          | *782                                                   |
|                                                                                                                                                 |                               |                               | Just upstream of East Chrysler Drive                                                            | *784                                                   |
|                                                                                                                                                 |                               |                               | Approximately 3000 feet upstream of East Chrysler Drive                                         | *786                                                   |
| Maps available for inspection at the Clerk's Office, City Hall, 123 South State Street, Belvidere, Illinois.                                    |                               |                               |                                                                                                 |                                                        |
| Send comments to Honorable Gaius Barr, Mayor, City of Belvidere, City Hall, 123 South State Street, Belvidere, Illinois 61008.                  |                               |                               |                                                                                                 |                                                        |
| Indiana                                                                                                                                         | (C) Greenwood, Johnson County | Fountain Creek                | At mouth                                                                                        | *738                                                   |
|                                                                                                                                                 |                               |                               | Just upstream of Rolling Hill Road                                                              | *743                                                   |
|                                                                                                                                                 |                               |                               | Just downstream of County Line Road                                                             | *747                                                   |
|                                                                                                                                                 |                               | Grassy Creek                  | About 740 feet downstream of Granada Drive                                                      | *809                                                   |
|                                                                                                                                                 |                               |                               | At the upstream corporate limits (above Fiesta Drive)                                           | *815                                                   |
|                                                                                                                                                 |                               | Pleasant Creek                | At mouth                                                                                        | *761                                                   |
|                                                                                                                                                 |                               |                               | Just downstream of U.S. Route 31                                                                | *782                                                   |
|                                                                                                                                                 |                               |                               | Just downstream of Conrail                                                                      | *803                                                   |
|                                                                                                                                                 |                               |                               | Just upstream of Conrail                                                                        | *810                                                   |
|                                                                                                                                                 |                               |                               | About 0.73 mile upstream of Broadway Street                                                     | *811                                                   |
|                                                                                                                                                 |                               |                               | Just downstream of South Emerson Avenue                                                         | *823                                                   |
|                                                                                                                                                 |                               | Pleasant Creek South Branch   | At mouth                                                                                        | *819                                                   |
|                                                                                                                                                 |                               |                               | Just downstream of South Emerson Avenue                                                         | *825                                                   |
|                                                                                                                                                 |                               | Pleasant Run                  | At downstream corporate limits (about 2,000 feet) upstream of 300 West Road                     | *725                                                   |
|                                                                                                                                                 |                               |                               | Just upstream of Fry Road (near Fountain Creek)                                                 | *744                                                   |
|                                                                                                                                                 |                               |                               | Just downstream of Main Street (about 1,200 feet east of 125 West Road)                         | *755                                                   |
|                                                                                                                                                 |                               |                               | Just downstream of U.S. Route 31                                                                | *768                                                   |
|                                                                                                                                                 |                               |                               | Just downstream of County Line Road                                                             | *780                                                   |
| Maps available for inspection at the City Hall, Planning and Zoning Department, 335 South Madison Avenue, Greenwood, Indiana.                   |                               |                               |                                                                                                 |                                                        |
| Send comments to Honorable Vaino Grayam, Mayor, City of Greenwood, City Hall, P.O. Box 245, 335 South Madison Avenue, Greenwood, Indiana 46142. |                               |                               |                                                                                                 |                                                        |
| Indiana                                                                                                                                         | (C) Portage, Porter County    | Crisman Ditch                 | At confluence with Willow Brook                                                                 | *619                                                   |
|                                                                                                                                                 |                               |                               | About 150 feet upstream of confluence with Willow Brook                                         | *623                                                   |
|                                                                                                                                                 |                               |                               | Just downstream of Central Avenue                                                               | *627                                                   |
|                                                                                                                                                 |                               |                               | Just upstream of Central Avenue                                                                 | *633                                                   |
|                                                                                                                                                 |                               |                               | About 700 feet upstream of Central Avenue                                                       | *633                                                   |
|                                                                                                                                                 |                               | Willow Creek                  | At mouth                                                                                        | *594                                                   |
|                                                                                                                                                 |                               |                               | About 1100 feet upstream of Melton Road                                                         | *650                                                   |
|                                                                                                                                                 |                               |                               | Just downstream of Conrail                                                                      | *610                                                   |
|                                                                                                                                                 |                               |                               | Just upstream of Interstate 80 and 90                                                           | *615                                                   |
|                                                                                                                                                 |                               |                               | About 1300 feet upstream of Mulberry Avenue                                                     | *620                                                   |
|                                                                                                                                                 |                               |                               | Just upstream of Stone Avenue                                                                   | *625                                                   |
|                                                                                                                                                 |                               |                               | About 4000 feet upstream of North Road                                                          | *634                                                   |
|                                                                                                                                                 |                               | Lindberg Ditch                | At mouth                                                                                        | *626                                                   |
|                                                                                                                                                 |                               |                               | About 0.39 mile upstream of mouth                                                               | *628                                                   |
|                                                                                                                                                 |                               |                               | About 140 feet downstream of Stone Avenue                                                       | *630                                                   |
|                                                                                                                                                 |                               | Robbins Ditch                 | Just downstream of Earth Dam                                                                    | *610                                                   |
|                                                                                                                                                 |                               |                               | Just upstream of Earth Dam                                                                      | *622                                                   |
|                                                                                                                                                 |                               |                               | Just upstream of Interstate 80 and 90                                                           | *628                                                   |
|                                                                                                                                                 |                               |                               | About 600 feet upstream of Airport Road                                                         | *632                                                   |
|                                                                                                                                                 |                               | East Arm Little Calumet River | Just upstream of Samuelson Road                                                                 | *594                                                   |
|                                                                                                                                                 |                               |                               | About 0.52 mile upstream of confluence of Salt Creek                                            | *586                                                   |
|                                                                                                                                                 |                               | Burns Waterway                | Mouth at Lake Michigan                                                                          | *584                                                   |
|                                                                                                                                                 |                               |                               | Just upstream of Indiana Harbor Belt Railroad                                                   | *589                                                   |
|                                                                                                                                                 |                               |                               | At confluence of East Arm Little Calumet River                                                  | *591                                                   |
|                                                                                                                                                 |                               | Little Calumet River          | At confluence of East Arm Little Calumet River                                                  | *591                                                   |



## Proposed Base (100-Year) Flood Elevations—Continued

| State                                                                                                                                                       | City/town/county                      | Source of flooding     | Location                                                            | #Depth in feet above ground.<br>*Elevation in feet (NGVD) |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------|------------------------|---------------------------------------------------------------------|-----------------------------------------------------------|
|                                                                                                                                                             |                                       |                        | About 0.2 mile upstream of confluence of Willow Creek               | *595                                                      |
|                                                                                                                                                             |                                       | Salt Creek             | At confluence with East Arm Little Calumet River                    | *595                                                      |
|                                                                                                                                                             |                                       |                        | About 500 feet upstream of Interstate 94                            | *602                                                      |
|                                                                                                                                                             |                                       |                        | Just downstream of Porter Road                                      | *606                                                      |
|                                                                                                                                                             |                                       |                        | Just downstream of Interstate 90 and 90                             | *617                                                      |
| Maps available for inspection at the City Engineer's Office, Town Hall, 6070 Central Avenue, Portage, Indiana.                                              |                                       |                        |                                                                     |                                                           |
| Send comments to Honorable John Williams, Mayor, City of Portage, Town Hall, 6070 Central Avenue, Portage, Indiana 46368.                                   |                                       |                        |                                                                     |                                                           |
| Iowa                                                                                                                                                        | (C) Denison, Crawford County          | Boyer River            | Just downstream of confluence of East Boyer River                   | *1161                                                     |
|                                                                                                                                                             |                                       |                        | About 1.1 miles upstream of Avenue C                                | *1169                                                     |
|                                                                                                                                                             |                                       | East Boyer River       | Just upstream of Illinois Central Gulf Railroad                     | *1161                                                     |
|                                                                                                                                                             |                                       |                        | Just downstream of County Highway 36                                | *1178                                                     |
|                                                                                                                                                             |                                       | Mud Creek              | At downstream corporate limits (near U.S. Highway 30)               | *1166                                                     |
|                                                                                                                                                             |                                       |                        | About 1.04 miles upstream of U.S. Highway 30                        | *1213                                                     |
| Maps available for inspection at the City Hall, Box 518, Denison, Iowa.                                                                                     |                                       |                        |                                                                     |                                                           |
| Send comments to Honorable Gerald M. Smithson, Mayor, City of Denison, City Hall, Box 518, Denison, Iowa 51442.                                             |                                       |                        |                                                                     |                                                           |
| Iowa                                                                                                                                                        | (C) Kirkman, Shelby County            | West Nishnabotna River | About 350 feet downstream from the downstream corporate limits      | *1225                                                     |
|                                                                                                                                                             |                                       |                        | About 300 feet upstream from the upstream corporate limits          | *1226                                                     |
| Maps available for inspection at the Mayor's Home, Kirkman, Iowa.                                                                                           |                                       |                        |                                                                     |                                                           |
| Send comments to Honorable Ron Heese, Mayor, City of Kirkman, City Hall, Kirkman, Iowa 51447.                                                               |                                       |                        |                                                                     |                                                           |
| Iowa                                                                                                                                                        | (C) Minden, Potawattamie County       | Keg Creek              | About 2300 feet downstream of County Road L-66                      | *1181                                                     |
|                                                                                                                                                             |                                       |                        | About 2000 feet upstream of County Road L-66                        | *1186                                                     |
| Maps available for inspection at the City Hall, Minden, Iowa.                                                                                               |                                       |                        |                                                                     |                                                           |
| Send comments to Honorable Orval Kaven, Mayor, City of Minden, City Hall, Minden, Iowa 51553.                                                               |                                       |                        |                                                                     |                                                           |
| Massachusetts                                                                                                                                               | (T) Arlington, Middlesex County       | Mystic River           | At confluence of Alewife Brook                                      | *8                                                        |
|                                                                                                                                                             |                                       |                        | At outlet of Mystic Lake                                            | *8                                                        |
|                                                                                                                                                             |                                       | Alewife Brook          | About 250 feet upstream of Broadway                                 | *7                                                        |
|                                                                                                                                                             |                                       |                        | Just upstream of Massachusetts Avenue                               | *8                                                        |
|                                                                                                                                                             |                                       |                        | About 350 feet upstream of State Route 2                            | *8                                                        |
|                                                                                                                                                             |                                       | Mill Brook             | Mouth at Lower Mystic Lake                                          | *8                                                        |
|                                                                                                                                                             |                                       |                        | About 50 feet upstream of Mystic Valley Parkway                     | *12                                                       |
|                                                                                                                                                             |                                       |                        | Just upstream of Fowle Avenue                                       | *16                                                       |
|                                                                                                                                                             |                                       |                        | Just upstream of Mystic Street                                      | *20                                                       |
|                                                                                                                                                             |                                       |                        | Just downstream of Cooks Hollow Dam                                 | *21                                                       |
|                                                                                                                                                             |                                       |                        | About 380 feet downstream of Mill Street                            | *41                                                       |
|                                                                                                                                                             |                                       |                        | Just upstream of Mill Street                                        | *49                                                       |
|                                                                                                                                                             |                                       |                        | Just upstream of Grove Street                                       | *67                                                       |
|                                                                                                                                                             |                                       |                        | Just upstream of Brattle Street                                     | *81                                                       |
|                                                                                                                                                             |                                       |                        | Just downstream of Mill Lane                                        | *115                                                      |
|                                                                                                                                                             |                                       |                        | Just downstream of Boston and Maine Railroad                        | *152                                                      |
| Maps available for inspection at the Planning and Development Department, Town Hall, Arlington, Massachusetts.                                              |                                       |                        |                                                                     |                                                           |
| Send comments to Honorable Don Marquis, Town Manager, Town of Arlington, Town Hall, Arlington, Massachusetts 02174.                                         |                                       |                        |                                                                     |                                                           |
| Michigan                                                                                                                                                    | (Twp.) Caledonia, Shiawassee County   | Shiawassee River       | About 0.35 mile upstream of Gould Street                            | *733                                                      |
|                                                                                                                                                             |                                       |                        | About 1.8 miles upstream of Gould Street                            | *734                                                      |
| Maps available for inspection at the Town Hall, 135 North State Road, Owosso, Michigan.                                                                     |                                       |                        |                                                                     |                                                           |
| Send comments to Honorable Earl LaRosa, Supervisor, Township of Caledonia, Town Hall, 135 North State Road, Owosso, Michigan 48867.                         |                                       |                        |                                                                     |                                                           |
| Michigan                                                                                                                                                    | (Twp.) Marengo, Calhoun County        | Rice Creek             | About 1600 feet downstream of dam                                   | *897                                                      |
|                                                                                                                                                             |                                       |                        | Just downstream of 20 Mile Road                                     | *907                                                      |
|                                                                                                                                                             |                                       | Kalamazoo River        | At western corporate limit                                          | *901                                                      |
|                                                                                                                                                             |                                       |                        | About 0.9 mile downstream of B-Drive North                          | *908                                                      |
|                                                                                                                                                             |                                       |                        | Just downstream of 24 Mile Road                                     | *920                                                      |
|                                                                                                                                                             |                                       | Mill Race              | About 1700 feet downstream of dam                                   | *898                                                      |
|                                                                                                                                                             |                                       |                        | Just upstream of dam                                                | *898                                                      |
| Maps available for inspection at the Town Hall, 21375 H Drive, North, Marshall, Michigan.                                                                   |                                       |                        |                                                                     |                                                           |
| Send comments to Honorable Bill Wilbur, Supervisor, Township of Marengo, Town Hall, 21375 H Drive, North, Marshall, Michigan 49068.                         |                                       |                        |                                                                     |                                                           |
| Michigan                                                                                                                                                    | (Cht. Twp.) Watertown, Clinton County | Looking Glass River    | Just upstream of Bauer Road                                         | *771                                                      |
|                                                                                                                                                             |                                       |                        | Just downstream of Airport Road                                     | *794                                                      |
| Maps available for inspection at the Town Hall, 12803 South Wacousta Road, Grand Ledge, Michigan.                                                           |                                       |                        |                                                                     |                                                           |
| Send comments to Honorable Vaughn Montgomery, Supervisor, Charter Township of Watertown, Town Hall, 12803 South Wacousta Road, Grand Ledge, Michigan 48837. |                                       |                        |                                                                     |                                                           |
| New Jersey                                                                                                                                                  | Little Ferry, Borough, Bergen County  | Hackensack River       | Entire shoreline                                                    | *9                                                        |
|                                                                                                                                                             |                                       | Losen Slope Creek      | Entire shoreline                                                    | *9                                                        |
| Maps available for inspection at the Municipal Building, One Catherine Street, Little Ferry, New Jersey.                                                    |                                       |                        |                                                                     |                                                           |
| Send comments to Honorable Eugene P. Barden, Mayor of Little Ferry, One Catherine Street, Little Ferry, New Jersey 07643.                                   |                                       |                        |                                                                     |                                                           |
| New York                                                                                                                                                    | Marcellus, Village, Onondaga County   | Ninemile Creek         | Downstream Corporate Limits of downstream segment through community | *804                                                      |
|                                                                                                                                                             |                                       |                        | Downstream face of dam No. 6                                        | *611                                                      |
|                                                                                                                                                             |                                       |                        | Upstream face of dam No. 6                                          | *619                                                      |
|                                                                                                                                                             |                                       |                        | 240' upstream of North Street Bridge                                | *622                                                      |
|                                                                                                                                                             |                                       |                        | Upstream face of abandoned Railroad Bridge (Upstream crossing)      | *636                                                      |
|                                                                                                                                                             |                                       |                        | Downstream face of dam No. 7                                        | *639                                                      |



## Proposed Base (100-Year) Flood Elevations—Continued

| State                                                                                                                                                                                                                                                                     | City/town/county                | Source of flooding        | Location                                                                                            | #Depth in feet above ground.<br>*Elevation in feet (NGVD) |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------|---------------------------|-----------------------------------------------------------------------------------------------------|-----------------------------------------------------------|
|                                                                                                                                                                                                                                                                           |                                 |                           | Upstream face of dam No. 7.....                                                                     | *653                                                      |
|                                                                                                                                                                                                                                                                           |                                 |                           | 1,600' downstream of Platt Road.....                                                                | *662                                                      |
|                                                                                                                                                                                                                                                                           |                                 |                           | Downstream face of Platt Road Bridge/Corporate Limits.....                                          | *667                                                      |
| <p>Maps available for inspection at the Village Hall, 6 Slocumb Street, Marcellus, New York.</p> <p>Send comments to Honorable Lester Norris, Mayor of Marcellus, Village Hall, 6 Slocumb Street, Marcellus, New York 13108.</p>                                          |                                 |                           |                                                                                                     |                                                           |
| New York                                                                                                                                                                                                                                                                  | Syracuse, City, Onondaga County | Harbor Brook              | Confluence with Onondaga Lake.....                                                                  | *372                                                      |
|                                                                                                                                                                                                                                                                           |                                 |                           | 50' downstream of State Fair Boulevard.....                                                         | *377                                                      |
|                                                                                                                                                                                                                                                                           |                                 |                           | 50' upstream of Delaware Street.....                                                                | *404                                                      |
|                                                                                                                                                                                                                                                                           |                                 |                           | 30' upstream of Velasco Road.....                                                                   | *407                                                      |
|                                                                                                                                                                                                                                                                           |                                 |                           | 450' upstream of Velasco Road.....                                                                  | *412                                                      |
|                                                                                                                                                                                                                                                                           |                                 | Ley Creek                 | Confluence with Onondaga Lake.....                                                                  | *372                                                      |
|                                                                                                                                                                                                                                                                           |                                 |                           | 30' downstream of 7th North Street.....                                                             | *375                                                      |
|                                                                                                                                                                                                                                                                           |                                 | Meadow Brook              | 150' downstream of Dewitt Road (downstream crossing).....                                           | *473                                                      |
|                                                                                                                                                                                                                                                                           |                                 |                           | 550' downstream of Dewitt Road (upstream crossing).....                                             | *483                                                      |
|                                                                                                                                                                                                                                                                           |                                 |                           | 50' upstream of Dewitt Road (upstream crossing).....                                                | *491                                                      |
|                                                                                                                                                                                                                                                                           |                                 |                           | 700' downstream of Carlton Road.....                                                                | *497                                                      |
|                                                                                                                                                                                                                                                                           |                                 |                           | 30' upstream of Carlton Road.....                                                                   | *505                                                      |
|                                                                                                                                                                                                                                                                           |                                 |                           | 100' upstream of Hillsboro Parkway.....                                                             | *511                                                      |
|                                                                                                                                                                                                                                                                           |                                 |                           | Upstream of Service Road.....                                                                       | *516                                                      |
|                                                                                                                                                                                                                                                                           |                                 |                           | 30' upstream of Brookford Road.....                                                                 | *526                                                      |
|                                                                                                                                                                                                                                                                           |                                 |                           | 400' upstream of Montana Street.....                                                                | *534                                                      |
|                                                                                                                                                                                                                                                                           |                                 |                           | 200' upstream of Fellows Avenue.....                                                                | *541                                                      |
|                                                                                                                                                                                                                                                                           |                                 |                           | 150' upstream of Meadowbrook Drive.....                                                             | *544                                                      |
| <p>Maps available for inspection at the Office of the City Engineer, City Hall, 233 Washington Street, Syracuse, New York.</p> <p>Send comments to Honorable Lee Alexander, Mayor of Syracuse, 201 City Hall, 233 Washington Street, Syracuse, New York 13202.</p>        |                                 |                           |                                                                                                     |                                                           |
| Ohio                                                                                                                                                                                                                                                                      | (V) Alexandria, Licking County  | Raccoon Creek             | About 200 feet downstream of Old State Route 37.....                                                | *940                                                      |
|                                                                                                                                                                                                                                                                           |                                 |                           | Just upstream of State Route 37.....                                                                | *944                                                      |
|                                                                                                                                                                                                                                                                           |                                 |                           | About 950 feet upstream of State Route 37.....                                                      | *946                                                      |
| <p>Maps available for inspection at the Mayor's Office, Town Hall, Granville Street near Route 37, Alexandria, Ohio.</p> <p>Send comments to Honorable Marvin Block, Mayor, Village of Alexandria, Town Hall, Granville Street near Route 37, Alexandria, Ohio 43001.</p> |                                 |                           |                                                                                                     |                                                           |
| Ohio                                                                                                                                                                                                                                                                      | (V) Granville, Licking County   | Raccoon Creek             | About 2100 feet downstream of State Route 661.....                                                  | *912                                                      |
|                                                                                                                                                                                                                                                                           |                                 |                           | At upstream corporate limits.....                                                                   | *916                                                      |
|                                                                                                                                                                                                                                                                           |                                 | Clear Run                 | At downstream corporate limits.....                                                                 | *929                                                      |
|                                                                                                                                                                                                                                                                           |                                 |                           | Just upstream of Cedar Street.....                                                                  | *952                                                      |
|                                                                                                                                                                                                                                                                           |                                 |                           | Just downstream of State Route 661.....                                                             | *970                                                      |
| <p>Maps available for inspection at the Village Manager's Office, Town Hall, 118 South Main Street, Granville, Ohio.</p> <p>Send comments to Honorable Carl A. Frazier, Mayor, Village of Granville, Town Hall, 118 South Main Street, Granville, Ohio 43023.</p>         |                                 |                           |                                                                                                     |                                                           |
| Ohio                                                                                                                                                                                                                                                                      | (Uninc.) Hamilton County        | Great Miami River         | At confluence with Ohio River.....                                                                  | *490                                                      |
|                                                                                                                                                                                                                                                                           |                                 |                           | Just upstream of Chessie System Railroad (about 600 feet upstream of confluence of Paddys Run)..... | *530                                                      |
|                                                                                                                                                                                                                                                                           |                                 |                           | About 4900 feet upstream of State Route 126.....                                                    | *556                                                      |
|                                                                                                                                                                                                                                                                           |                                 | Little Miami River        | About 1.4 miles downstream of Beaumont Avenue.....                                                  | *501                                                      |
|                                                                                                                                                                                                                                                                           |                                 |                           | Just downstream of confluence of East Fork River.....                                               | *511                                                      |
|                                                                                                                                                                                                                                                                           |                                 |                           | At upstream county boundary.....                                                                    | *597                                                      |
|                                                                                                                                                                                                                                                                           |                                 | Whitewater River          | At confluence with Great Miami River.....                                                           | *490                                                      |
|                                                                                                                                                                                                                                                                           |                                 |                           | About 7100 feet upstream of confluence of Jameson Creek (state boundary).....                       | *513                                                      |
|                                                                                                                                                                                                                                                                           |                                 | Dry Fork Whitewater River | At confluence with Whitewater River.....                                                            | *490                                                      |
|                                                                                                                                                                                                                                                                           |                                 |                           | Just upstream of Kilby Road.....                                                                    | *498                                                      |
|                                                                                                                                                                                                                                                                           |                                 |                           | Just upstream of West Road.....                                                                     | *544                                                      |
|                                                                                                                                                                                                                                                                           |                                 |                           | At upstream county boundary.....                                                                    | *594                                                      |
|                                                                                                                                                                                                                                                                           |                                 | Ohio River                | Just downstream of confluence of Great Miami River.....                                             | *490                                                      |
|                                                                                                                                                                                                                                                                           |                                 |                           | About 1.0 mile upstream of confluence with Eight Mile Creek.....                                    | *504                                                      |
|                                                                                                                                                                                                                                                                           |                                 | Howard Creek              | At confluence with Dry Fork Whitewater River.....                                                   | *558                                                      |
|                                                                                                                                                                                                                                                                           |                                 |                           | About 550 feet downstream of Oxford Road.....                                                       | *566                                                      |
|                                                                                                                                                                                                                                                                           |                                 |                           | Just downstream of Oxford Road.....                                                                 | *568                                                      |
|                                                                                                                                                                                                                                                                           |                                 | East Fork Mill Creek      | At City of Cincinnati corporate limits.....                                                         | *539                                                      |
|                                                                                                                                                                                                                                                                           |                                 |                           | At City of Reading corporate limits.....                                                            | *540                                                      |
|                                                                                                                                                                                                                                                                           |                                 | West Fork Mill Creek      | Just upstream of Woodlawn corporate limits.....                                                     | *614                                                      |
|                                                                                                                                                                                                                                                                           |                                 |                           | Just downstream of West Fork Dam.....                                                               | *638                                                      |
|                                                                                                                                                                                                                                                                           |                                 |                           | Just downstream of Covered Bridge Road.....                                                         | *702                                                      |
|                                                                                                                                                                                                                                                                           |                                 |                           | Just downstream of Dam No. 1.....                                                                   | *710                                                      |
|                                                                                                                                                                                                                                                                           |                                 |                           | Just upstream of Dam No. 1.....                                                                     | *716                                                      |
|                                                                                                                                                                                                                                                                           |                                 |                           | Just upstream of Dam No. 3.....                                                                     | *724                                                      |
|                                                                                                                                                                                                                                                                           |                                 |                           | Just upstream of Ripplebrook Drive.....                                                             | *748                                                      |
|                                                                                                                                                                                                                                                                           |                                 |                           | About 500 feet downstream of Compton Road.....                                                      | *775                                                      |
|                                                                                                                                                                                                                                                                           |                                 |                           | Just downstream of Pippin Road.....                                                                 | *776                                                      |
|                                                                                                                                                                                                                                                                           |                                 | Winton Woods Creek        | About 8450 feet downstream of Diane Lynn Road.....                                                  | *704                                                      |
|                                                                                                                                                                                                                                                                           |                                 |                           | About 7230 feet downstream of Diane Lynn Road.....                                                  | *718                                                      |
|                                                                                                                                                                                                                                                                           |                                 |                           | About 950 feet downstream of Daly Road.....                                                         | *755                                                      |
|                                                                                                                                                                                                                                                                           |                                 |                           | Just downstream of Daly Road.....                                                                   | *759                                                      |
|                                                                                                                                                                                                                                                                           |                                 | West Fork Sycamore Creek  | At City of Indian Hill corporate limits.....                                                        | *665                                                      |
|                                                                                                                                                                                                                                                                           |                                 |                           | Just upstream of Miami Avenue.....                                                                  | *719                                                      |
|                                                                                                                                                                                                                                                                           |                                 |                           | Just downstream of Galbraith Road.....                                                              | *754                                                      |
|                                                                                                                                                                                                                                                                           |                                 |                           | At Galbraith Road.....                                                                              | *771                                                      |
|                                                                                                                                                                                                                                                                           |                                 | Clough Creek              | At confluence with Little Miami River.....                                                          | *501                                                      |
|                                                                                                                                                                                                                                                                           |                                 |                           | About 1020 feet upstream of State Route 125.....                                                    | *507                                                      |
|                                                                                                                                                                                                                                                                           |                                 |                           | Just upstream of Corby Road.....                                                                    | *592                                                      |



## Proposed Base (100-Year) Flood Elevations—Continued

| State                                                                                                                                                   | City/town/county                         | Source of flooding        | Location                                                                                      | #Depth in feet above ground. *Elevation in feet (NGVD) |
|---------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------|---------------------------|-----------------------------------------------------------------------------------------------|--------------------------------------------------------|
|                                                                                                                                                         |                                          |                           | Just upstream of Clough Pike (about 680 feet upstream of Berkshire Road).                     | *611                                                   |
|                                                                                                                                                         |                                          |                           | About 2000 feet downstream of Five Mile Road (just upstream of Clough Pike).                  | *666                                                   |
|                                                                                                                                                         |                                          |                           | About 1420 feet downstream of Five Mile Road (just upstream of private drive).                | *675                                                   |
|                                                                                                                                                         |                                          |                           | Just downstream of Five Mile Road outlet structure.                                           | *698                                                   |
|                                                                                                                                                         |                                          |                           | Just upstream of Five Mile Road outlet structure.                                             | *729                                                   |
|                                                                                                                                                         |                                          |                           | Just downstream of State Road.                                                                | *788                                                   |
|                                                                                                                                                         |                                          |                           | About 620 feet upstream of State Road.                                                        | *769                                                   |
|                                                                                                                                                         | Muddy Creek                              |                           | Just upstream of Village of Addyston corporate limits.                                        | *493                                                   |
|                                                                                                                                                         |                                          |                           | Just downstream of Beechcreek Road.                                                           | *748                                                   |
|                                                                                                                                                         |                                          |                           | Just upstream of Muddy Creek Road (about 1350 feet upstream of Beechcreek Road).              | *762                                                   |
|                                                                                                                                                         |                                          |                           | Just upstream of Sidney Road.                                                                 | *781                                                   |
|                                                                                                                                                         |                                          |                           | About 1080 feet upstream of Sidney Road.                                                      | *782                                                   |
|                                                                                                                                                         | Newton (Clear) Creek                     |                           | At confluence with Little Miami River.                                                        | *501                                                   |
|                                                                                                                                                         |                                          |                           | At Village of Newton corporate limits.                                                        | *501                                                   |
|                                                                                                                                                         | McCullough Run                           |                           | At confluence with Little Miami River.                                                        | *501                                                   |
|                                                                                                                                                         |                                          |                           | At Village of Newton corporate limits.                                                        | *501                                                   |
|                                                                                                                                                         | Fork of McCullough Run                   |                           | At confluence with McCullough Run.                                                            | *501                                                   |
|                                                                                                                                                         |                                          |                           | At Village of Newton corporate limits.                                                        | *508                                                   |
|                                                                                                                                                         | Congress Run                             |                           | About 810 feet downstream of Caldwell Drive.                                                  | *525                                                   |
|                                                                                                                                                         |                                          |                           | At City of Cincinnati upstream corporate limit.                                               | *623                                                   |
|                                                                                                                                                         |                                          |                           | About 2900 feet downstream of North Hill Lane (downstream of culvert exit).                   | *766                                                   |
|                                                                                                                                                         |                                          |                           | About 2900 feet downstream of North Hill Lane (just upstream of culvert exit).                | *783                                                   |
|                                                                                                                                                         |                                          |                           | Just downstream of North Hill Lane culvert outlet.                                            | *841                                                   |
|                                                                                                                                                         |                                          |                           | Just upstream of North Hill Lane culvert outlet.                                              | *851                                                   |
|                                                                                                                                                         | Raiders Run                              |                           | At confluence with West Fork Sycamore Creek.                                                  | *701                                                   |
|                                                                                                                                                         |                                          |                           | Just upstream of Montgomery Road.                                                             | *709                                                   |
|                                                                                                                                                         |                                          |                           | Just downstream of Interstate 71 outlet.                                                      | *752                                                   |
|                                                                                                                                                         |                                          |                           | Just upstream of Interstate 71 inlet.                                                         | *790                                                   |
|                                                                                                                                                         | Wulf Run                                 |                           | Just upstream of Delhi Road (downstream crossing).                                            | *786                                                   |
|                                                                                                                                                         |                                          |                           | Just downstream of Morris Avenue.                                                             | *799                                                   |
|                                                                                                                                                         |                                          |                           | At Morris Avenue.                                                                             | *803                                                   |
|                                                                                                                                                         |                                          |                           | Just downstream of Anderson Ferry Road.                                                       | *825                                                   |
| Maps available for inspection at the Planning Department, Hamilton County Courthouse, 1000 Main Street, Cincinnati, Ohio.                               |                                          |                           |                                                                                               |                                                        |
| Send comments to Honorable Michael Malone, County Administrator, Hamilton County, Hamilton County Courthouse, 1000 Main Street, Cincinnati, Ohio 45202. |                                          |                           |                                                                                               |                                                        |
| Ohio                                                                                                                                                    | (V) Johnstown, Licking County            | Raccoon Creek             | At downstream corporate limits.                                                               | *1066                                                  |
|                                                                                                                                                         |                                          |                           | At upstream corporate limits.                                                                 | *1061                                                  |
|                                                                                                                                                         |                                          | Kiber Run                 | At downstream corporate limits.                                                               | *1073                                                  |
|                                                                                                                                                         |                                          |                           | At upstream corporate limits.                                                                 | *1079                                                  |
| Maps available for inspection at the Mayor's Office, Town Hall, Route 62, 129 East Coshocton Street, Johnstown, Ohio.                                   |                                          |                           |                                                                                               |                                                        |
| Send comments to Honorable John R. Haines, mayor, Village of Johnstown, Town Hall, Route 62, 129 East Coshocton Street, Johnstown, Ohio 43031.          |                                          |                           |                                                                                               |                                                        |
| Oregon                                                                                                                                                  | Josephine County, (Unincorporated Areas) | Rogue River               | 40 feet downstream from center of Robertson Bridge.                                           | *836                                                   |
|                                                                                                                                                         |                                          |                           | 100 feet north along Roguesville Lane from intersection with Lower River Road.                | *904                                                   |
|                                                                                                                                                         |                                          | Jumpoff Joe Creek         | 60 feet downstream from center of Merlin Galice Road.                                         | *864                                                   |
|                                                                                                                                                         |                                          |                           | 40 feet downstream from center of Monument Drive.                                             | *1002                                                  |
|                                                                                                                                                         |                                          | Louse Creek               | 30 feet downstream from center of Southern Pacific Railroad Bridge.                           | *902                                                   |
|                                                                                                                                                         |                                          |                           | 10 feet downstream from center of Monument Drive.                                             | *1122                                                  |
|                                                                                                                                                         |                                          | Applegate River           | 50 feet upstream from center of U.S. Highway 199 (Redwood Highway).                           | *906                                                   |
|                                                                                                                                                         |                                          |                           | 75 feet downstream from center of State Highway 238 (Williams Highway).                       | *1045                                                  |
|                                                                                                                                                         |                                          | State Creek               | 40 feet downstream from center of Fish Hatchery Road.                                         | *919                                                   |
|                                                                                                                                                         |                                          | Murphy Creek              | Intersection of stream and center of Southside Road (Williams Highway).                       | *1072                                                  |
|                                                                                                                                                         |                                          | Illinois River            | 210 feet upstream from center of Finch Road.                                                  | *1251                                                  |
|                                                                                                                                                         |                                          |                           | 50 feet downstream from center of Pomeroy Dam.                                                | *1279                                                  |
|                                                                                                                                                         |                                          | East Fork Illinois River  | Intersection of stream and center of U.S. Highway 199 (Redwood Highway).                      | *1293                                                  |
|                                                                                                                                                         |                                          |                           | 20 feet downstream from center of Waldo Road.                                                 | *1523                                                  |
|                                                                                                                                                         |                                          | West Fork Illinois River  | 150 feet downstream from center of downstream crossing of U.S. Highway 199 (Redwood Highway). | *1320                                                  |
|                                                                                                                                                         |                                          |                           | 80 feet downstream from center of upstream crossing of U.S. Highway 199 (Redwood Highway).    | *1415                                                  |
|                                                                                                                                                         |                                          | Deer Creek                | Intersection of stream and center of Old Redwood Highway (old U.S. Highway 199).              | *1300                                                  |
| Maps available for inspection at Planning Office, 510 NW 4th, Grants Pass, Oregon.                                                                      |                                          |                           |                                                                                               |                                                        |
| Send comments to the Honorable William F. Ford, Josephine County Courthouse, Grants Pass, Oregon 97526.                                                 |                                          |                           |                                                                                               |                                                        |
| Pennsylvania                                                                                                                                            | Allentown City, Lehigh County            | Lehigh River              | Downstream Corporate Limits.                                                                  | *243                                                   |
|                                                                                                                                                         |                                          |                           | Confluence of Little Lehigh Creek.                                                            | *249                                                   |
|                                                                                                                                                         |                                          |                           | Hamilton Street downstream.                                                                   | *255                                                   |
|                                                                                                                                                         |                                          |                           | Tilghman Street downstream.                                                                   | *264                                                   |
|                                                                                                                                                         |                                          |                           | Upstream Corporate Limits.                                                                    | *267                                                   |
|                                                                                                                                                         |                                          | Tributary to Lehigh River | Confluence with Lehigh River.                                                                 | *266                                                   |



## Proposed Base (100-Year) Flood Elevations—Continued

| State        | City/town/county                           | Source of flooding          | Location                                                                           | #Depth in feet above ground, *Elevation in feet (NGVD) |
|--------------|--------------------------------------------|-----------------------------|------------------------------------------------------------------------------------|--------------------------------------------------------|
| Pennsylvania | Allentown, Lehigh County                   | Little Lehigh Creek         | Approximately 2,800' upstream of confluence with Lehigh River                      | *262                                                   |
|              |                                            |                             | Upstream Corporate Limits                                                          | *260                                                   |
|              |                                            |                             | Confluence with Lehigh River                                                       | *249                                                   |
|              |                                            |                             | Basin Street upstream                                                              | *252                                                   |
|              |                                            |                             | Confluence of Jordan Creek                                                         | *257                                                   |
|              |                                            |                             | Ward Street upstream                                                               | *260                                                   |
|              |                                            |                             | Park Drive upstream                                                                | *270                                                   |
|              |                                            |                             | Bogerts Road upstream                                                              | *278                                                   |
|              |                                            |                             | Fish Hatchery Road upstream                                                        | *289                                                   |
|              |                                            |                             | Devonshire Road upstream                                                           | *303                                                   |
|              |                                            | Trout Creek                 | Upstream Corporate Limits                                                          | *308                                                   |
|              |                                            |                             | Confluence with Little Lehigh Creek                                                | *252                                                   |
|              |                                            |                             | Upstream East Susquehanna Street                                                   | *267                                                   |
|              |                                            |                             | Upstream Conrail bridge                                                            | *296                                                   |
|              |                                            |                             | South Delaware Street upstream                                                     | *306                                                   |
|              |                                            |                             | Downstream of culvert at Dixon Street                                              | *326                                                   |
|              |                                            | West Branch Trout Creek     | Upstream 2nd Street                                                                | *345                                                   |
|              |                                            |                             | Corporate Limits                                                                   | *356                                                   |
|              |                                            |                             | Confluence with Trout Creek                                                        | *304                                                   |
|              |                                            |                             | Upstream Vine Street                                                               | *320                                                   |
|              |                                            | Jordan Creek                | Upstream South 10th Street                                                         | *349                                                   |
|              |                                            |                             | Approximately 110' upstream of culvert under Emans Avenue                          | *363                                                   |
|              |                                            |                             | Approximately 970' upstream of Roy Street                                          | *413                                                   |
|              |                                            |                             | Downstream State Route 309                                                         | *465                                                   |
|              |                                            | Cedar Creek                 | Confluence with Little Lehigh Creek                                                | *257                                                   |
|              |                                            |                             | Tilghman Street upstream                                                           | *263                                                   |
|              |                                            |                             | North 4th Street upstream                                                          | *267                                                   |
|              |                                            |                             | 7th Street upstream                                                                | *272                                                   |
|              |                                            | Little Cedar Creek          | Upstream Corporate Limits                                                          | *274                                                   |
|              |                                            |                             | Confluence with Little Lehigh River                                                | *262                                                   |
|              |                                            |                             | Mosser Street upstream                                                             | *266                                                   |
|              |                                            |                             | Hamilton Street upstream                                                           | *277                                                   |
|              |                                            | Unami Creek                 | 30th Street upstream                                                               | *289                                                   |
|              |                                            |                             | Cedar Crest Boulevard upstream                                                     | *292                                                   |
|              |                                            |                             | Confluence with Cedar Creek                                                        | *290                                                   |
|              |                                            |                             | Tilghman Street upstream                                                           | *325                                                   |
|              |                                            | Corporate Limits upstream   | Corporate Limits upstream                                                          | *349                                                   |
|              |                                            |                             | Approximately 300' upstream of the Corporate Limits                                | *352                                                   |
|              |                                            | Unami Creek                 | Downstream Corporate Limits                                                        | *415                                                   |
|              |                                            |                             | Trumbauersville Road bridge (upstream side)                                        | *433                                                   |
|              |                                            |                             | Allentown Road bridge (upstream side)                                              | *463                                                   |
|              |                                            |                             | Millard Square Pike bridge (upstream side)                                         | *485                                                   |
|              |                                            |                             | Breisch Lane bridge (downstream side)                                              | *501                                                   |
| Pennsylvania | Northampton, Borough, Northampton County   | Lehigh River                | Downstream Corporate Limits                                                        | *285                                                   |
|              |                                            |                             | 9th Street (Downstream)                                                            | *287                                                   |
|              |                                            |                             | Northampton Dam (Upstream)                                                         | *299                                                   |
|              |                                            |                             | Upstream Corporate Limits                                                          | *302                                                   |
|              |                                            |                             | Confluence with Lehigh River                                                       | *288                                                   |
|              |                                            | Hokendauqua Creek           | Approximately 700' upstream of Main Street                                         | *292                                                   |
|              |                                            |                             | Conrail (2nd crossing) (Downstream)                                                | *311                                                   |
|              |                                            |                             | Dam (Upstream)                                                                     | *318                                                   |
|              |                                            |                             | State Route 329 (Upstream)                                                         | *329                                                   |
|              |                                            |                             | Approximately 1,240' upstream of State route 329                                   | *329                                                   |
|              |                                            | Perkiomen Creek             | Downstream Corporate Limits                                                        | *146                                                   |
|              |                                            |                             | Spring Mount Road bridge (upstream side)                                           | *160                                                   |
|              |                                            |                             | Salford Station Road bridge (upstream side)                                        | *171                                                   |
|              |                                            |                             | Hendricks Road bridge (upstream side)                                              | *182                                                   |
|              |                                            |                             | Upstream Corporate Limits                                                          | *186                                                   |
|              |                                            | Unami Creek                 | Downstream Corporate Limits                                                        | *213                                                   |
|              |                                            |                             | Upstream Corporate Limits                                                          | *216                                                   |
|              |                                            | East Branch Perkiomen Creek | Downstream Corporate Limits                                                        | *199                                                   |
|              |                                            |                             | Shelly Road bridge (upstream side)                                                 | *211                                                   |
|              |                                            |                             | Old Sumneytown Pike bridge (upstream side)                                         | *215                                                   |
|              |                                            |                             | Upstream Corporate Limits                                                          | *220                                                   |
|              |                                            | Vaughn Run                  | Confluence with East Branch Perkiomen Creek                                        | *214                                                   |
|              |                                            |                             | Old Sumneytown Pike bridge (upstream side) Upstream crossing                       | *249                                                   |
|              |                                            |                             | Approximately 1,130' upstream from upstream crossing of Old Sumneytown Pike bridge | *260                                                   |
| Pennsylvania | Upper Salford, Township, Montgomery County | Perkiomen Creek             | Downstream Corporate Limits                                                        | *146                                                   |
|              |                                            |                             | Spring Mount Road bridge (upstream side)                                           | *160                                                   |

Maps available for inspection at the Upper Salford Township Municipal Building, Salfordville, Pennsylvania.

Send comments to Honorable John W. Kohr, Chairman of the Upper Salford Board of Supervisors, P.O. Box 7, Salfordville, Pennsylvania 18958.



## Proposed Base (100-Year) Flood Elevations—Continued

| State                                                                                                                                           | City/town/county                 | Source of flooding                                                                                                                                   | Location                                                                                                                       | #Depth in feet above ground.<br>*Elevation in feet (NGVD) |                                                                     |                                                           |
|-------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------|---------------------------------------------------------------------|-----------------------------------------------------------|
| Pennsylvania                                                                                                                                    | Wayne, Township, Lawrence County | Beaver River                                                                                                                                         | Approximately 2,000' downstream of Conrail                                                                                     | *763                                                      |                                                                     |                                                           |
|                                                                                                                                                 |                                  |                                                                                                                                                      | Approximately 1,800' upstream of State Route 288                                                                               | *765                                                      |                                                                     |                                                           |
|                                                                                                                                                 |                                  | Squaw Run                                                                                                                                            | Approximately 8,220' upstream of State Route 288                                                                               | *768                                                      |                                                                     |                                                           |
|                                                                                                                                                 |                                  |                                                                                                                                                      | Confluence with Duck Run                                                                                                       | *919                                                      |                                                                     |                                                           |
|                                                                                                                                                 |                                  | Tributary to Squaw Run                                                                                                                               | Upstream of Legislative Route 37017                                                                                            | *940                                                      |                                                                     |                                                           |
|                                                                                                                                                 |                                  |                                                                                                                                                      | Squaw Run Road (downstream crossing) Upstream side                                                                             | *993                                                      |                                                                     |                                                           |
|                                                                                                                                                 |                                  | Duck Run                                                                                                                                             | Mount Hope Road (upstream side)                                                                                                | *1,051                                                    |                                                                     |                                                           |
|                                                                                                                                                 |                                  |                                                                                                                                                      | Approximately 4,330' upstream of Mount Hope Road                                                                               | *1,134                                                    |                                                                     |                                                           |
|                                                                                                                                                 |                                  | Slippery Rock Creek                                                                                                                                  | Confluence with Squaw Run                                                                                                      | *1,051                                                    |                                                                     |                                                           |
|                                                                                                                                                 |                                  |                                                                                                                                                      | Approximately 588' upstream of the confluence with Squaw Run                                                                   | *1,095                                                    |                                                                     |                                                           |
|                                                                                                                                                 |                                  | Tributary to Duck Run                                                                                                                                | Approximately 1,148' upstream of the confluence with Squaw Run                                                                 | *1,136                                                    |                                                                     |                                                           |
|                                                                                                                                                 |                                  |                                                                                                                                                      | Confluence with Connoquenessing Creek                                                                                          | *813                                                      |                                                                     |                                                           |
|                                                                                                                                                 |                                  | Slippery Rock Creek                                                                                                                                  | New Castle Road (upstream side)                                                                                                | *917                                                      |                                                                     |                                                           |
|                                                                                                                                                 |                                  |                                                                                                                                                      | Legislative Route 37012 (upstream side)                                                                                        | *944                                                      |                                                                     |                                                           |
|                                                                                                                                                 |                                  | Tributary to Duck Run                                                                                                                                | Confluence of Tributary to Duck Run                                                                                            | *1,001                                                    |                                                                     |                                                           |
|                                                                                                                                                 |                                  |                                                                                                                                                      | Confluence with Duck Run                                                                                                       | *1,001                                                    |                                                                     |                                                           |
| Washington                                                                                                                                      | Bothell (City), King County      | Sammamish River                                                                                                                                      | Approximately 730' upstream of Private Drive                                                                                   | *1,035                                                    |                                                                     |                                                           |
|                                                                                                                                                 |                                  |                                                                                                                                                      | Approximately 1,755' upstream of Private Drive                                                                                 | *1,082                                                    |                                                                     |                                                           |
|                                                                                                                                                 |                                  | North Creek                                                                                                                                          | Approximately 400' downstream of State Route 488                                                                               | *831                                                      |                                                                     |                                                           |
|                                                                                                                                                 |                                  |                                                                                                                                                      | State Route 488 (upstream crossing) (upstream side)                                                                            | *835                                                      |                                                                     |                                                           |
|                                                                                                                                                 |                                  | Tributary to Duck Run                                                                                                                                | Approximately 5,100' upstream of upstream crossing of State Route 488                                                          | *840                                                      |                                                                     |                                                           |
|                                                                                                                                                 |                                  |                                                                                                                                                      | Approximately 1,400' upstream of Van Gorder Road                                                                               | *848                                                      |                                                                     |                                                           |
|                                                                                                                                                 |                                  | Maps available for inspection at the Wayne Township Municipal Building, 1418 Wampum Road, Ellwood City, Pennsylvania.                                |                                                                                                                                |                                                           |                                                                     |                                                           |
|                                                                                                                                                 |                                  | Send comments to Honorable William Drotelt, Chairman of the Wayne Board of Supervisors, 4353 Ellwood-New Castle Road, New Castle, Pennsylvania 16101 |                                                                                                                                |                                                           |                                                                     |                                                           |
|                                                                                                                                                 |                                  | Washington                                                                                                                                           | Bothell (City), King County                                                                                                    | Sammamish River                                           | At intersection of Sammamish River and Burlington Northern Railroad | *20                                                       |
|                                                                                                                                                 |                                  |                                                                                                                                                      |                                                                                                                                |                                                           | North Creek                                                         | At intersection of North Creek and Northeast 195th Street |
| Maps available for inspection at Planning Department, City Hall, 18305 - 101st Avenue N.E.; Bothell, Washington.                                |                                  |                                                                                                                                                      |                                                                                                                                |                                                           |                                                                     |                                                           |
| Send comments to the Honorable Sue Walsh, 18305 - 101st Avenue N.E., Bothell, Washington 98011.                                                 |                                  |                                                                                                                                                      |                                                                                                                                |                                                           |                                                                     |                                                           |
| Wisconsin                                                                                                                                       | (V) Kimberly, Outagamie County   | Fox River                                                                                                                                            | About 120 feet upstream of Maes Avenue Bridge                                                                                  | *692                                                      |                                                                     |                                                           |
|                                                                                                                                                 |                                  |                                                                                                                                                      | Just downstream of Cedars Lock Dam                                                                                             | *694                                                      |                                                                     |                                                           |
|                                                                                                                                                 |                                  |                                                                                                                                                      | Just upstream of Cedars Lock Dam                                                                                               | *702                                                      |                                                                     |                                                           |
|                                                                                                                                                 |                                  |                                                                                                                                                      | At upstream corporate limits                                                                                                   | *703                                                      |                                                                     |                                                           |
| Maps available for inspection at the Office of the Village Clerk, Village Hall, 515 Kimberly Avenue, Kimberly, Wisconsin.                       |                                  |                                                                                                                                                      |                                                                                                                                |                                                           |                                                                     |                                                           |
| Send comments to Honorable James Siebers, Village President, Village of Kimberly, Village Hall, 515 Kimberly Avenue, Kimberly, Wisconsin 54138. |                                  |                                                                                                                                                      |                                                                                                                                |                                                           |                                                                     |                                                           |
| Wisconsin                                                                                                                                       | (Uninc.) Monroe County           | Baraboo River                                                                                                                                        | At downstream county limit                                                                                                     | *963                                                      |                                                                     |                                                           |
|                                                                                                                                                 |                                  |                                                                                                                                                      | About 0.15 mile downstream of 33rd Road                                                                                        | *977                                                      |                                                                     |                                                           |
|                                                                                                                                                 |                                  |                                                                                                                                                      | Just downstream of 33rd Road                                                                                                   | *981                                                      |                                                                     |                                                           |
|                                                                                                                                                 |                                  |                                                                                                                                                      | Just downstream of Glendale Highway                                                                                            | *995                                                      |                                                                     |                                                           |
|                                                                                                                                                 |                                  | Beaver Creek                                                                                                                                         | At Kendall corporate limits                                                                                                    | *1005                                                     |                                                                     |                                                           |
|                                                                                                                                                 |                                  |                                                                                                                                                      | Just upstream of Sparta corporate limits                                                                                       | *787                                                      |                                                                     |                                                           |
|                                                                                                                                                 |                                  | Black River                                                                                                                                          | About 3.7 miles upstream of Sparta corporate limits                                                                            | *832                                                      |                                                                     |                                                           |
|                                                                                                                                                 |                                  |                                                                                                                                                      | At downstream county line                                                                                                      | *724                                                      |                                                                     |                                                           |
|                                                                                                                                                 |                                  | Brush Creek                                                                                                                                          | Upstream county line                                                                                                           | *732                                                      |                                                                     |                                                           |
|                                                                                                                                                 |                                  |                                                                                                                                                      | About 0.61 mile downstream of Hoff Valley Road                                                                                 | *685                                                      |                                                                     |                                                           |
|                                                                                                                                                 |                                  | Upper Brush Creek                                                                                                                                    | Just upstream of 17th Drive                                                                                                    | *915                                                      |                                                                     |                                                           |
|                                                                                                                                                 |                                  |                                                                                                                                                      | At confluence of Brush Creek                                                                                                   | *951                                                      |                                                                     |                                                           |
|                                                                                                                                                 |                                  | Council Creek                                                                                                                                        | Just upstream of 4th Drive                                                                                                     | *1007                                                     |                                                                     |                                                           |
|                                                                                                                                                 |                                  |                                                                                                                                                      | About 0.41 mile upstream of 4th Drive                                                                                          | *1019                                                     |                                                                     |                                                           |
|                                                                                                                                                 |                                  | Kickapoo River                                                                                                                                       | At City of Tomah corporate limits                                                                                              | *969                                                      |                                                                     |                                                           |
|                                                                                                                                                 |                                  |                                                                                                                                                      | Just upstream of State Highway 131                                                                                             | *1027                                                     |                                                                     |                                                           |
|                                                                                                                                                 |                                  | La Crosse River                                                                                                                                      | Just upstream of 24 Court                                                                                                      | *1092                                                     |                                                                     |                                                           |
|                                                                                                                                                 |                                  |                                                                                                                                                      | At Ontario corporate limits                                                                                                    | *870                                                      |                                                                     |                                                           |
|                                                                                                                                                 |                                  | Little La Crosse River                                                                                                                               | Just downstream Wilton corporate limits                                                                                        | *955                                                      |                                                                     |                                                           |
|                                                                                                                                                 |                                  |                                                                                                                                                      | Just upstream Wilton corporate limits                                                                                          | *979                                                      |                                                                     |                                                           |
|                                                                                                                                                 |                                  | South Fork Lemonier River                                                                                                                            | About 0.28 mile upstream of Dixon Court                                                                                        | *1121                                                     |                                                                     |                                                           |
|                                                                                                                                                 |                                  |                                                                                                                                                      | At downstream county line                                                                                                      | *737                                                      |                                                                     |                                                           |
|                                                                                                                                                 |                                  | Farmers Valley Creek                                                                                                                                 | Just upstream of State Highway 27                                                                                              | *766                                                      |                                                                     |                                                           |
|                                                                                                                                                 |                                  |                                                                                                                                                      | Just downstream of State Highway 21                                                                                            | *787                                                      |                                                                     |                                                           |
|                                                                                                                                                 |                                  | Unnamed Tributary in Cannon Valley                                                                                                                   | Just upstream of State Highway 21                                                                                              | *793                                                      |                                                                     |                                                           |
|                                                                                                                                                 |                                  |                                                                                                                                                      | Just downstream Camp McCoy Military Reservation                                                                                | *814                                                      |                                                                     |                                                           |
|                                                                                                                                                 |                                  | South Fork Lemonier River                                                                                                                            | Just downstream of Chicago, Milwaukee, St. Paul and Pacific Railroad                                                           | *756                                                      |                                                                     |                                                           |
|                                                                                                                                                 |                                  |                                                                                                                                                      | About 1.6 miles upstream of Chicago, Milwaukee, St. Paul and Pacific Railroad (about 0.85 mile downstream of County Highway X) | *810                                                      |                                                                     |                                                           |
|                                                                                                                                                 |                                  | Farmers Valley Creek                                                                                                                                 | Just downstream of County Highway F                                                                                            | *860                                                      |                                                                     |                                                           |
|                                                                                                                                                 |                                  |                                                                                                                                                      | About 1.32 miles upstream of Endora Avenue                                                                                     | *1000                                                     |                                                                     |                                                           |
|                                                                                                                                                 |                                  | Unnamed Tributary in Cannon Valley                                                                                                                   | Chicago and North Western railroad                                                                                             | *917                                                      |                                                                     |                                                           |
|                                                                                                                                                 |                                  |                                                                                                                                                      | About 1.95 miles upstream of County Highway C                                                                                  | *984                                                      |                                                                     |                                                           |
|                                                                                                                                                 |                                  | Unnamed Tributary in Cannon Valley                                                                                                                   | Just downstream of Sparta corporate limits                                                                                     | *785                                                      |                                                                     |                                                           |
|                                                                                                                                                 |                                  |                                                                                                                                                      | About 1.67 miles upstream of Dalton Road                                                                                       | *874                                                      |                                                                     |                                                           |
|                                                                                                                                                 |                                  | Unnamed Tributary in Cannon Valley                                                                                                                   | Mouth at Little La Crosse River                                                                                                | *800                                                      |                                                                     |                                                           |



## Proposed Base (100-Year) Flood Elevations—Continued

| State | City/town/county | Source of flooding                    | Location                                                                         | #Depth in feet above ground. Elevation in feet (NGVD) |
|-------|------------------|---------------------------------------|----------------------------------------------------------------------------------|-------------------------------------------------------|
|       |                  | Unnamed Tributary in Pleasant Valley. | About 1.86 miles upstream of State Highway 27<br>Mouth at Little La Crosse River | *837<br>*793                                          |
|       |                  |                                       | About 0.52 mile upstream of State Highway 27                                     | *799                                                  |
|       |                  |                                       | About 0.65 mile upstream of abandoned road bridge                                | *817                                                  |
|       |                  | Lake Tomah                            | About 0.7 mile downstream of County Highway C                                    | *963                                                  |

Maps available for inspection at the Office of the Zoning Administrator, Monroe County Courthouse, Sparta, Wisconsin. Send comments to Honorable Chris Stefferud, County Board Chairman, Monroe County, Monroe County Courthouse, Sparta, Wisconsin 54656.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator).

Issued: July 30, 1981.

Wallace S. Towe, Jr.,

Acting Administrator, Federal Insurance Administration.

[FR Doc. 81-23660 Filed 8-13-81; 8:45 am]

BILLING CODE 6718-03-M

## 44 CFR Part 67

[Docket No. FEMA-6015]

### National Flood Insurance Program; Proposed Flood Elevation Determinations; Florida

**AGENCY:** Federal Insurance Administration, FEMA.

**ACTION:** Proposed Rule; revision.

**SUMMARY:** Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the City of Inverness, Citrus County, Florida.

Due to recent engineering analysis, this proposed rule revises the proposed determinations of base (100-year) flood elevations published in 46 FR 31682 on June 17, 1981 and in the Citrus County Chronicle on June 3, and June 10, 1981, and hence supersedes those previously published proposed rules.

**DATE:** The period for comment will be ninety (90) days following the second publication of this notice in a newspaper of local circulation in the above-named community.

**ADDRESSES:** Maps and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for inspection at City Hall, Main Street, Inverness, Florida 32650. Send comments to: Mayor Jacob Blanton or Ms. Marian Lattin, City Clerk, City Hall, P.O. Box 337, Inverness, Florida 32650.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert G. Chappell, P.E., National Flood Insurance Program, (202) 755-

5585, Federal Emergency Management Agency, Washington, D.C. 20472.

**SUPPLEMENTARY INFORMATION:** Proposed base (100-year) flood elevations are listed below for selected locations in Inverness, Florida in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 44 CFR 67.4(A).

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the floodplain area.

The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts floodplain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the floodplain and do not prescribe development. Thus, this action only forms the basis for future local actions. It imposes on new requirements; or itself it has no economic impact.

The proposed base (100-year) flood elevations are:

| Source of flooding | Location         | Elevation, feet national geodetic vertical datum |
|--------------------|------------------|--------------------------------------------------|
| Tsala Apopka Lake  | Entire shoreline | *43                                              |
| Henderson Lake     | Entire shoreline | *43                                              |
| Little Spivey Lake | Entire shoreline | *43                                              |
| White Lake         | Entire shoreline | *36                                              |
| Grant Lake         | Entire shoreline | *36                                              |

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator)

Issued: July 30, 1981.

Wallace S. Towe, Jr.

Acting Administrator, Federal Insurance Administration.

[FR Doc. 81-23817 Filed 8-13-81; 8:45 am]

BILLING CODE 6718-03-M



## 44 CFR Part 67

[Docket No. FEMA-6074]

**National Flood Insurance Program;  
Proposed Flood Elevation  
Determinations; Massachusetts****AGENCY:** Federal Insurance  
Administration, FEMA.**ACTION:** Proposed rule; correction.

**SUMMARY:** This document corrects a Notice of Proposed Determinations of base (100-year) flood elevations for selected locations in the City of Boston, Suffolk County, Massachusetts, previously published at 46 FR 30121 on June 5, 1981.

**EFFECTIVE DATE:** August 14, 1981.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert G. Chappell, P.E., Federal Emergency Management Agency, National Flood Insurance Program, (202) 755-5585, Washington, D.C. 20472.

**SUPPLEMENTARY INFORMATION:** The Federal Insurance Administrator gives notice of the correction to the Notice of Proposed Determinations of base (100-year) flood elevations for selected locations in the City of Boston, Suffolk County, Massachusetts, previously published at 46 FR 30121 on June 5, 1981, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR 67.4(a).

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the flood plain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts flood plain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal

standards, the elevations prescribe how high to build in the flood plain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

Due to a clerical error, the location description listed as "approximately 2,300' upstream of Access Road", under the Source of Flooding of Stony Brook, should be amended to read "approximately 2,170' upstream of Access Road." The corresponding elevation, Flood Insurance Study (profile) and Rate Map were correct as published.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator)

Issued: July 20, 1981.

Donald L. Collins,

Acting Administrator, Federal Insurance  
Administration.

[FR Doc. 81-23650 Filed 8-13-81; 8:46 am]

BILLING CODE 6718-03-M

## 44 CFR Part 67

[Docket No. FEMA-6052]

**National Flood Insurance Program;  
Proposed Flood Elevation  
Determinations; Minnesota****AGENCY:** Federal Insurance  
Administration, FEMA.**ACTION:** Proposed rule; revision.

**SUMMARY:** Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the Unincorporated Areas of Washington County, Minnesota.

Due to recent engineering analysis, this proposed rule revises the proposed determinations of base (100-year) flood elevations published at 45 FR 27146 on May 18, 1981, and hence supersedes those previously published rules.

**DATE:** The period for comment will be ninety (90) days following the second publication of this notice in a newspaper of local circulation in the above named community.

**ADDRESSES:** See table below:**FOR FURTHER INFORMATION CONTACT:**

Mr. Robert G. Chappell, National Flood Insurance Program, (202) 755-5585, Federal Emergency Management Agency, Washington, D.C. 20472.

**SUPPLEMENTARY INFORMATION:** Proposed base (100-year) flood elevations are listed below for selected locations in the Unincorporated Areas of Washington County, Minnesota, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR 67.4(a).

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the (proposed) flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the flood plain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts flood plain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the flood plain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.



## Proposed Base (100-Year) Flood Elevations

| State     | City/town/county           | Source of flooding | Location                                                                     | #Depth in feet above ground. Elevation in feet (NGVD) |
|-----------|----------------------------|--------------------|------------------------------------------------------------------------------|-------------------------------------------------------|
| Minnesota | (Uninc.) Washington County | Mississippi River  | At the confluence with the St. Croix River                                   | *691                                                  |
|           |                            |                    | About 0.8 mile upstream of Lock and Dam No. 2                                | *695                                                  |
|           |                            |                    | Just upstream of the upstream corporate limits of Cottage Grove              | *697                                                  |
|           |                            | St. Croix River    | Just downstream of the downstream corporate limits of St. Paul Park          | *701                                                  |
|           |                            |                    | Just upstream of the confluence of Trout Brook                               | *691                                                  |
|           |                            |                    | Just upstream of the Chicago and North Western Railroad                      | *692                                                  |
|           |                            |                    | Just upstream of the upstream corporate limits of Stillwater                 | *693                                                  |
|           |                            |                    | Just downstream of the downstream corporate limits of Marine-on-St. Croix    | *696                                                  |
|           |                            |                    | Just upstream of the upstream corporate limits of Marine-on-St. Croix        | *698                                                  |
|           |                            |                    | About 3500 feet downstream of the upstream county boundary                   | *701                                                  |
|           |                            |                    | About 2200 feet upstream of the confluence of the St. Croix River            | *705                                                  |
|           |                            |                    | About 4550 feet upstream of the confluence of the St. Croix River            | *769                                                  |
|           |                            |                    | About 200 feet upstream of County Highway 5                                  | *840                                                  |
|           |                            | Browns Creek       | Just upstream of the downstream crossing of the Burlington Northern railroad | *855                                                  |
|           |                            |                    | Just downstream of the upstream crossing of the Burlington Northern railroad | *862                                                  |
|           |                            |                    | Just upstream of the upstream crossing of the Burlington Northern railroad   | *868                                                  |
|           |                            |                    | Just upstream of abandoned dam                                               | *882                                                  |
|           |                            |                    | About 1650 feet downstream of State Highway 96                               | *895                                                  |
|           |                            |                    | Just downstream of State Highway 96                                          | *896                                                  |
|           |                            |                    | At the downstream corporate limits of the City of Hugo                       | *920                                                  |
|           |                            |                    | At the upstream corporate limits of the City of Hugo                         | *921                                                  |
|           |                            |                    | Big Marine Lake                                                              | *943                                                  |
|           |                            |                    | Big Carnelian Lake                                                           | *966                                                  |
|           |                            |                    | Long Lake                                                                    | *893                                                  |
|           |                            |                    | Halfbreed Lake                                                               | *939                                                  |

Maps available for inspection at the Washington County Courthouse, 14900 61st Street, North, Stillwater, Minnesota.

Send comments to Honorable A. E. Schaeffer, County Board Chairman, Washington County, Washington County Courthouse, 14900 61st Street, North, Stillwater, Minnesota 55082.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 [33 FR 17804, November 28, 1968], as amended; 42 U.S.C. 4001-4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator)

Issued: July 30, 1981.

Wallace S. Towe, Jr.,

Acting Administrator, Federal Insurance Administration.

[FR Doc. 81-23821 Filed 8-13-81; 8:45 am]

BILLING CODE 6718-03-M

## 44 CFR Part 67

[Docket No. FEMA-6027]

**National Flood Insurance Program;  
Proposed Flood Elevation  
Determinations; Pennsylvania;  
Correction**

**AGENCY:** Federal Insurance  
Administration, FEMA.

**ACTION:** Proposed rule; correction.

**SUMMARY:** This document corrects a Notice of Proposed Determinations of base (100-year) flood elevations for selected locations in the Township of Scott, Allegheny County, Pennsylvania, previously published at 46 FR 21035 on April 8, 1981.

**EFFECTIVE DATE:** August 14, 1981.

**FOR FURTHER INFORMATION CONTACT:**

Mr. Robert G. Chappell, P.E., Federal  
Emergency Management Agency,  
National Flood Insurance Program, (202)  
755-5585, Washington, D.C. 20472.

**SUPPLEMENTARY INFORMATION:** The Federal Insurance Administrator gives notice of the correction to the Notice of Proposed Determinations of base (100-year) flood elevations for selected locations in the Township of Scott, Allegheny County, Pennsylvania, previously published at 46 FR 21035 on April 8, 1981, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)) 42 U.S.C. 4001-4128, and 44 CFR 67.4a).

Pursuant to the provision of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the flood plain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts flood plain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the flood plain and do



not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

In order for the following locations in the Township of Scott, Allegheny County, Pennsylvania to be more correctly identified with the corresponding Flood Insurance Study (profile) and Flood Insurance Rate Map, the Notice of Proposed Base Flood Elevations should be amended to read as follows:

| Source of flooding | Location                                          | Elevation in feet (National Geodetic Vertical Datum) |
|--------------------|---------------------------------------------------|------------------------------------------------------|
| Scrubgrass Run     | Approximately 2,040' upstream of Scrubgrass Road. | *893                                                 |
|                    | Approximately 2,400' upstream of Scrubgrass Road. | *904                                                 |
|                    | Approximately 2,830' upstream of Scrubgrass Road. | *914                                                 |
|                    | Approximately 1,900' downstream of Raven Drive.   | *917                                                 |
|                    | Approximately 1,900' downstream of Raven Drive.   | *927                                                 |
|                    | Approximately 575' downstream of Raven Drive.     | *953                                                 |
|                    | Approximately 140' upstream of Painters Run Road. | *867                                                 |
| Painters Run       | Approximately 140' upstream of Painters Run Road. | *867                                                 |

[National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968, as amended; 42 U.S.C. 4001-4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator)

Issued: July 31, 1981

Wallace S. Towe, Jr.,

Acting Administrator, Federal Insurance Administration.

[FR Doc. 81-23657 Filed 8-13-81; 8:45 am]

BILLING CODE 6718-03-M

#### 44 CFR Part 67

[Docket No. FEMA-6061]

#### National Flood Insurance Program; Proposed Flood Elevation Determinations; Vermont; Correction

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Proposed rule; correction.

**SUMMARY:** This document corrects a Notice of Proposed Determinations of base (100-year) flood elevations for selected locations in the Town of Middlesex, Washington County, Vermont, previously published at 46 FR 28453 on May 27, 1981.

**EFFECTIVE DATE:** August 14, 1981.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert G. Chappell, P.E., Federal Emergency Management Agency, National Flood Insurance Program, (202) 755-5585, Washington, D.C. 20472.

**SUPPLEMENTARY INFORMATION:** The Federal Insurance Administrator gives notice of the correction to the Notice of Proposed Determinations of base (100-year) flood elevations for selected locations in the Town of Middlesex, Washington County, Vermont, previously published at 46 FR 28453 on May 27, 1981, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR 67.4(a).

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency

Management Agency, hereby certifies that the proposed flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the flood plain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts flood plain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the flood plain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

Due to a clerical error, the elevation upstream of Sunny Brook Road (downstream crossing), under the Source of Flooding of Sunny Brook, was incorrectly published as 521 feet (NGVD). It should be amended to read 529 feet in elevation. The corresponding Flood Insurance Study (profile) and Flood Insurance Rate Map were correct as printed.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator).

Issued: July 20, 1981.

Donald L. Collins,

Acting Administrator, Federal Insurance Administration.

[FR Doc. 81-23659 Filed 8-13-81; 8:45 am]

BILLING CODE 6718-03-M



# Notices

Federal Register

Vol. 46, No. 157

Friday, August 14, 1981

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Soil Conservation Service

#### Lower Otter and Dead Creeks Watershed, Vermont; Finding of No Significant Impact

**AGENCY:** Soil Conservation Service, USDA.

**ACTION:** Notice of finding of no significant impact.

**FOR FURTHER INFORMATION CONTACT:** Mr. Coy A. Garrett, State Conservationist, Soil Conservation Service, 1 Burlington Square, Suite 205, Burlington, Vermont 05401, telephone 802-951-6795.

**Notice:** Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Lower Otter and Dead Creeks Watershed, Addison County, Vermont.

The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Coy A. Garrett, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for watershed protection, water quality, and wildlife improvement. The planned works of improvement include conservation land treatment measures and animal waste management practices.

The Notice of Finding of No Significant Impact (FNSI) has been forwarded to the Environmental

Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Coy A. Garrett. The FNSI has been sent to various Federal, State, and local agencies, and interested parties. A limited number of copies of the FNSI are available to fill single copy requests at the above address.

Implementation of the proposal will not be initiated until 30 days after the date of this publication in the Federal Register.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Program. Office of Management and Budget Circular A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: August 5, 1981.

Joseph W. Haas,

Deputy Chief for Natural Resource Projects.

[FR Doc. 81-23641 Filed 8-13-81; 8:45 am]

BILLING CODE 3410-16-M

## CIVIL AERONAUTICS BOARD

[Docket 39652; Order 81-8-59]

### Application of Air Florida, Inc.

**AGENCY:** Civil Aeronautics Board.

**ACTION:** Notice of Order To Show Cause (81-8-59).

**SUMMARY:** The Board is proposing to award air route authority at Charleston, S.C. and Savannah, Ga. to Air Florida under expedited show-cause procedures.

The complete text of this order is available as noted below.

**DATES:** Objections: All interested persons having objections to the Board issuing an order making final the tentative findings and conclusions of the above order shall file, by August 31, 1981, a statement of objections together with a summary of the testimony, statistical data, and other material expected to be relied upon to support the stated objections. Such filings should be served upon all parties listed below.

**ADDRESSES:** Objections to the issuance of a final order should be filed in Docket 39652. They should be addressed to the Docket Section, Civil Aeronautics Board, Washington, D.C. 20428.

In addition, copies of such filings should be served on Air Florida; the Mayor and Airport Manager of each city to which the pleading refers, and the State Aeronautical Commission of the State in which such city is situated.

### FOR FURTHER INFORMATION CONTACT:

Anne W. Stockvis, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428, (202) 673-5198.

**SUPPLEMENTARY INFORMATION:** The complete text of Order 81-8-59 is available from our Distribution Section, Room 516, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request for Order 81-8-59 to that address.

By the Bureau of Domestic Aviation.

Dated: August 11, 1981.

Phyllis T. Kaylor,  
Secretary.

[FR Doc. 81-23811 Filed 8-13-81; 8:45 am]

BILLING CODE 6320-01-M

[Docket Nos. 33363, 39471, and 39472]

### Former Large Irregular Air Service Investigation and Applications of Aero Exchange, Inc. d.b.a Pan Aero International; Reassignment of Proceeding

This proceeding, insofar as it involves the applications of Aero Exchange, Inc. d/b/a Pan Aero International, Dockets 39471 and 39472, has been reassigned to Administrative Law Judge Elias C. Rodriguez. Future communications should be addressed to Judge Rodriguez.

Dated: Washington, D.C., August 10, 1981.

Joseph J. Saunders,  
Chief Administrative Law Judge.

[FR Doc. 81-23810 Filed 8-13-81; 8:45 am]

BILLING CODE 6320-01-M

## DEPARTMENT OF COMMERCE

### International Trade Administration

#### Certain Steel Wire Nails From Japan; Termination of Antidumping Investigation

**AGENCY:** International Trade Administration, Commerce.



**ACTION:** Termination of antidumping investigation.

**SUMMARY:** This notice is to advise the public that the antidumping investigation concerning certain steel wire nails from Japan is being terminated. The termination is based on a cessation of sales below trigger prices substantially prior to initiation of the investigation and on the receipt of assurances from the Japanese manufacturers that all sales of the product for a two year period beginning on August 11, 1981, will be made at prices at or above the relevant trigger price.

**EFFECTIVE DATE:** August 11, 1981.

**FOR FURTHER INFORMATION CONTACT:** F. Lynn Holec, Import Administration, U.S. Department of Commerce, Washington, D.C., Telephone (202) 377-3793.

**SUPPLEMENTARY INFORMATION:** On July 2, 1981, the International Trade Administration, Department of Commerce, self-initiated an antidumping investigation of certain steel wire nails from Japan (46 FR 34613). That initiation was based on information contained in Special Summary Steel Invoices submitted by importers of nails from Japan which indicated that, during the period October 21, 1980, through March 31, 1981, forty-four percent of the involved merchandise entered the United States below the applicable trigger prices.

On August 10, 1981, counsel for the Japanese nail manufacturers submitted a memorandum of understanding in which the termination of the investigation was proposed. This memorandum is reproduced as an appendix to this notice.

Section 734(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1673c(a)) provides that "An investigation under this subtitle may be terminated by either the administering authority or the Commission after notice to all parties to the investigation, upon the withdrawal of the petition by the petitioner." We have determined that in self-initiated investigations the administering authority is the petitioner for purposes of this provision and may, in appropriate circumstances, terminate investigations.

The memorandum of understanding provides for the submission of assurances by each Japanese manufacturer of nails for export to the United States that all contracts for the sale of steel wire nails to the United States below trigger price ceased on or about March 5, 1981, and that all future contracts for sale would be at or above trigger price for a two year period

beginning on August 11, 1981.

Information available to us now, which was not at the time of initiation, tends to substantiate the cessation of below trigger sales well in advance of initiation of the investigation. The manufacturers also agreed to supply all information necessary to monitor these price assurances effectively. The Japanese Ministry of International Trade and Industry (MITI), moreover, has pledged its complete cooperation to ensure that the commitments proposed in the memorandum of understanding by the Japanese steel wire nail manufacturers are fulfilled. The assurances cannot be modified without the consent of the Department and any violation of such assurances may result in the initiation of an expedited investigation by the Department.

The Department of Commerce has notified all parties to the investigation that it was considering the termination of this investigation and has consulted with the International Trade Commission regarding that decision. Further, the Department has concluded that termination of the investigation is in the public interest.

Accordingly, I hereby conclude that based upon the earlier cessation of below-trigger price sale and the submission of the described assurances, and in view of the fact that imports of certain steel wire nails will be monitored effectively pursuant to the trigger price mechanism, it is appropriate to terminate this investigation.

Dated: August 11, 1981.

Lawrence Brady,

Assistant Secretary for Trade Administration.

#### Memorandum of Understanding

Pursuant to the Federal Register notice of July 2, 1981 (46 F.R. 34613), the Department of Commerce initiated an antidumping investigation of certain steel wire nails from Japan. This investigation was initiated on the basis of information developed by the Department of Commerce ("the Department") under the "Trigger Price Mechanism" ("TPM") for steel mill products. Since the Commerce Department has obtained information that contracts for sales below trigger price of steel wire nails from Japan have ceased since the beginning of March of 1981 and has obtained assurances of continued compliance with TPM from the Japanese parties involved in the investigation, the Department shall terminate its antidumping investigation with respect to certain steel wire nails from Japan in accordance with the understandings set forth below.

**A. Product Coverage.** This memorandum and the assurances provided are applicable to steel wire nails manufactured in and exported from Japan to the United States which are covered by the above referenced

investigation, specifically, steel wire nails as currently provided for under TSUS Item Nos. 646.25 and 646.26.

**B. Basis of the Understanding.** The named Japanese steel wire nail manufacturers, accounting for virtually all of the nails exported to the United States according to figures submitted to the Department of Commerce by the Japanese Ministry of International Trade and Industry, ceased contracting for sales of steel wire nails to the U.S. below trigger price on or about March 5, 1981 and agree, individually through their attorneys, to continue to sell to the United States at prices which are in compliance with the TPM. Consequently, the assurances contained herein shall be applicable to contracts for the sale of the merchandise under investigation contracted for export to the United States on or after March 5, 1981.

The assurances provided by the Japanese manufacturers shall remain in effect for a period of not less than two years from the effective date of termination of the investigation. Should the TPM be terminated or suspended prior to the two year period, the parties to the agreement understand that the Japanese manufacturers, through MITI, will continue to provide TPM type cost information or, pursuant to consultations with the Department, such other information as agreed upon between the parties so that an applicable comparison price may be calculated in order to monitor prices effectively.

The Japanese manufacturers will not alter or terminate the terms of this understanding without the consent of the Department of Commerce. Any such alteration or termination of the understanding may result in the reopening of the investigation in accordance with the provisions of Paragraph D.

**C. Monitoring.** The Department of Commerce shall continue to monitor compliance with the TPM by analysis of the summary steel invoices (SSSI) on a regular basis and the Japanese manufacturers shall continue to cooperate through the Japanese Ministry of International Trade and Industry in supplying the cost of production data necessary to determine trigger prices for steel wire nails on a quarterly basis. To the extent that compliance with trigger prices is determined by the Department of Commerce not to be adequately monitored through their normal review of SSSI's by the Department, the Department will consult with representatives of the Japanese industry to determine reasonable steps which might be taken to facilitate such monitoring.

**D. Reopening of the Investigation.** The Department of Commerce shall consider the assurances to have been terminated if there is evidence of the violation of the basis of the assurances or notice from the Japanese manufacturers that they intend to alter or terminate the assurances without the consent of the Commerce Department. If the assurances are violated, or altered or terminated without the consent of the Commerce Department, the Department may undertake an expedited investigation and suspend liquidation at the earliest possible time permitted by law.



**E. Other Provisions.** Each Japanese manufacturer shall provide a letter to the Department of Commerce within a reasonable time incorporating the understandings contained herein.

Respectfully submitted,

Arter Hadden & Hemmendinger

Walter J. Spak,

1919 Pennsylvania Avenue, N.W., Suite 400,  
Washington, D.C. 20006 (202) 857-0960

on behalf of the following individual manufacturers:

Daito Wire Works Ltd.,

Amatei Inc.,

Nippon Seisen Co. Ltd.,

Murakami Kogyo Co. Ltd.,

Murata Sangyo Co. Ltd.,

Chiyoda Nail Mfg. Co.,

Sunny Industries Corp.,

Kongo Special Nail Mfg. Co. Ltd.,

Matsuba Seibyo Co. Ltd.,

Osaka Seibyo Co. Ltd.,

Nitto Wire Nail Mfg. Co. Ltd.

[FR Doc. 81-23732 Filed 8-13-81; 8:45 am]

BILLING CODE 3510-25-M

#### **Fairleigh Dickinson University School of Dentistry, Decision on Application for Duty-Free Entry of Scientific Article**

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR Part 301).

A copy of the record pertaining to this decision is available for public review between 8:30 A.M. and 5:00 P.M. in Room 2119 of the Department of Commerce Building, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

Docket No. 81-00068. Applicant: Fairleigh Dickinson University School of Dentistry, 110 Fuller Place, Hackensack, N.J. 07601. Article: KAG 72-KT Konig/Hofer Program Controlled Automatic Feeder and Accessories. Manufacturer: Andreas Hofer, Switzerland. Intended use of article: See Notice on page 18565 in the Federal Register of March 25, 1981.

Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States. Reasons: The foreign article feeds 72 rats simultaneously 17 times per day. The Department of Health and Human Services advises in its memorandum dated June 17, 1981 that (1) the capability of the foreign article described above is pertinent to

the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article, for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 81-23619 Filed 8-13-81; 8:45 am]

BILLING CODE 3510-25-M

#### **Fairleigh Dickinson University and Northwestern University; Consolidated Decision on Applications for Duty-Free Entry of Accessories for Foreign Instruments**

The following is a consolidated decision on applications for duty-free entry of accessories for foreign instruments pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (P.L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR Part 301). (See especially § 301.11(e).)

A copy of the record pertaining to each of the applications in this consolidated decision is available for public review between 8:30 a.m. and 5:00 p.m. in Room 2119 of the Department of Commerce Building, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Docket No. 81-00069. Applicant: Fairleigh Dickinson University, School of Dentistry, 110 Fuller Place, Hackensack, N.J. 07601. Article: Chromium-steel Feeding Channels. Manufacturer: Andreas Hofer, Switzerland. Intended use of article: See Notice on page 18566 in the Federal Register of March 25, 1981. Advice submitted by: Department of Health and Human Services: June 17, 1981.

Docket No. 81-00070. Applicant: Fairleigh Dickinson University, School of Dentistry, 1101 Fuller Place, Hackensack, N.J. 07601. Article: Drinking Vessel. Manufacturer: Andreas Hofer, Switzerland. Intended use of article: See Notice on page 18566 in the Federal Register of March 25, 1981. Advice submitted by: Department of Health and Human Services: June 17, 1981.

Docket No. 81-00072. Applicant: Northwestern University, 633 Clark

Street, Evanston, IL 60201. Article: Laboratory Computer Interface Cards, 4 (502-19D). Manufacturer: Cambridge Electronic Design, Ltd., United Kingdom. Intended use of article: See Notice on page 18566 in the Federal Register of March 25, 1981. Advice submitted by: Department of Health and Human Services: June 17, 1981.

Comments: No comments have been received with respect to any of the foregoing applications. Decision: Applications approved. No instruments or apparatus of equivalent scientific value to the foreign articles, for the purposes for which the articles are intended to be used, is being manufactured in the United States. Reasons: The applications relate to compatible accessories for instruments that have been previously imported for the use of the applicant institutions. The articles are being manufactured by the manufacturers which produced the instruments with which they are intended to be used. We are advised by the Department of Health and Human Services in its respectively cited memoranda that the accessories are pertinent to the applicant's intended use and that it knows of no comparable domestic articles.

The Department of Commerce knows of no similar accessories manufactured in the United States which are interchangeable with or can be readily adapted to the instruments with which the foreign articles are intended to be used.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 81-23622 Filed 8-13-81; 8:45 am]

BILLING CODE 3510-25-M

#### **State of North Carolina, et al.; for Duty-Free Entry of Scientific Articles**

The following are notices of the receipt of applications for duty-free entry of scientific articles pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897). Interested persons may present their views with respect to the question of whether an instrument or apparatus of equivalent scientific value for the purposes for which the article is intended to be used is being manufactured in the United States. Such comments must be filed in triplicate with the Director, Statutory Import Programs staff, U.S. Department of



Commerce, Washington, D.C. 20230, within 20 calendar days after the date on which this notice of application is published in the *Federal Register*.

Regulations (15 CFR 301.9) issued under the cited Act prescribe the requirements for comments.

A copy of each application is on file, and may be examined between 8:30 A.M. and 5:00 P.M., Monday through Friday, in Room 2119 of the Department of Commerce Building, 14th and Constitution Avenue NW., Washington, D.C. 20230.

Docket No.: 81-00265. Applicant: State of North Carolina, Department of Agriculture, 1 W. Edenton Street, Raleigh, N.C. 27611. Article: Electron Microscope, Model H-300 with Accessories. Manufacturer: Hitachi Scientific Instruments, Japan. Intended use of article: The article is intended to be used to examine specimens for the presence of disease producing viruses so that a rapid diagnosis of herd or flock problems can be made. The objectives of these investigations are to obtain an accurate, rapid diagnosis of animal disease so that proper treatment, management, prophylaxis, etc., can be initiated resulting in reduction of loss of animals (largely food animals—livestock and poultry). Application received by Commissioner of Customs: June 3, 1981.

Docket No.: 81-00266. Applicant: National Aeronautics and Space Administration, Goddard Space Flight Center, Greenbelt, MD 20771. Article: Turbo Molecular Vacuum Pump, TPV 026, with Solid State Frequency Converter. Manufacturer: Pfeiffer Vakuum Technik GmbH, West Germany. Intended use of article: The article is intended to be used as part of a mass spectrometer experiment package for planetary atmospheric composition measurements. The expected composition of the planetary atmospheres under consideration for future missions is predominately hydrogen and helium with trace amounts of the other noble gases as well as methane and ammonia. Isotopic measurement of the lighter elements and absolute density measurements of most constituents are required with a desired relative accuracy of around 1%. Application received by Commissioner of Customs: June 3, 1981.

Docket No.: 81-00268. Applicant: The University of Chicago, 5540 S. Ellis Avenue, Chicago, IL 60637. Article: Electron Impact Ionization Source for a Mass Spectrometer. Manufacturer: Swiss Federal Institute of Technology, Switzerland. Intended use of article: The article is intended to be used for extraction and isotopic characterization

of noble gases in various small samples (1 mg or less). The article will also be used in doctoral research of various graduate students, involving isotopic abundance determinations of noble gases in various samples. Application received by Commissioner of Customs: June 3, 1981.

Docket No.: 81-00269. Applicant: Wesley Medical Center, 550 N. Hillside, Wichita, Kansas 67214. Article: Electron Linear Accelerator, Therac 20 with Accessories. Manufacturer: Atomic Energy of Canada Limited, Canada. Intended use of article: The article is intended to be used to study the responses of malignancy in humans to radiation treatment, clinical side effects associated with such treatment and formulation for further treatment regimens. Application received by Commissioner of Customs: June 4, 1981.

Docket No.: 81-00270. Applicant: Thomas S. Clarkson Memorial College of Technology, Potsdam, New York 13676. Article: NMR Spectrometer, Model JNM/FX-90Q with Accessories. Manufacturer: JEOL, Japan. Intended use of article: The article is intended to be used for varied research projects, including but not limited to:

1. Conformational studies of coenzyme A analogs.
2. Magnetic resonance studies of bacterial nitrogen metabolism.
3. Quantitative determination of plasmalogens and other phospholipids from tissue extracts using  $^{31}\text{P}$  as an analytical tool.
4. Aggregation of bile salts in aqueous solutions.
5. Studies of catalysis by metal carbonyl cluster complexes.
6. Hydration of carbonyl and related compounds.
7. Cmr of copper and zinc coordination complexes and proteins.
8. Studies of metal-oligopeptide complexes.
9. Studies of binuclear Mo (V) and Cu (II) complexes.
10. Experiments involving dynamics of polynucleotides relevant to the lac operator gene.
11. NMR studies of lead (IV) compound.

In addition, the article will be used in chemistry courses to teach an appreciation of how bonding between atoms leads to various physical and chemical properties. Application received by Commissioner of Customs: June 4, 1981.

Docket No.: 81-00271. Applicant: Maine Maritime Academy, Castine, ME 04421. Article: Marine Diesel Propulsion Simulator and Electrical Switchboard with Independent Instructors Console. Manufacturer: MacGregory Canada,

Ltd., Canada. Intended use of article: The article is intended to be used in the Academy's undergraduate engineering curriculum in Eg-32 Diesel Engineering II, Eg-33 Diesel Engineering III, Eg-51 Modern Diesel Operations. The general objectives of these three courses are to provide the engineering student with indepth knowledge relative to construction, principles of operation, various systems, malfunctions, trouble shooting techniques, and hands-on experience in operation and maintenance of diesel engines. Application received by Commissioner of Customs: June 4, 1981.

Docket No.: 81-00272. Applicant: Midwest Center for Mass Spectrometry, University of Nebraska-Lincoln, Department of Chemistry, Lincoln, Nebraska 68588. Article: Gas Chromatograph/Mass Spectrometer, Model MS-80 with Accessories. Manufacturer: Kratos Scientific Instruments, United Kingdom. Intended use of article: The article is intended to be used for research projects that involve identification and quantitative analysis of organic materials. These projects will include:

1. Complex mixture analysis by capillary column GC/MS.
2. Trace analysis at the parts-per-trillion level.
3. Exact mass measurements using GC/MS.
4. Alternating electron ionization/chemical ionization.
5. Identification and structure proofs of pure compounds using EI and CI mass spectrometry.

Some research projects will be conducted by graduate students for credit in the course "Dissertation Research." Application received by Commissioner of Customs: June 4, 1981.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director Statutory Import Programs Staff.

[FR Doc. 81-23623 Filed 8-13-81; 8:45 am]

BILLING CODE 3510-25-M

#### University of Minnesota; Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR part 301).



A copy of the record pertaining to this decision is available for public review between 8:30 a.m. and 5:00 p.m. in Room 2119 of the Department of Commerce Building, 14th and Constitution Avenue NW., Washington, D.C. 20230.

Docket No. 81-00113. Applicant: University of Minnesota, 151 Washington Avenue, SE., Minneapolis, MN 55455. Article: Series II Deer Rheometer and accessories. Manufacturer: Rheometer Marketing, Ltd., United Kingdom. Intended use of article: See Notice on page 19843 in the Federal Register of April 1, 1981.

Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States. Reasons: The foreign article measures yield stress and recoverable strain. The National Bureau of Standards advises in its memorandum dated June 29, 1981 that (1) the capabilities of the foreign article described above are pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value of the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 81-23621 Filed 8-13-81; 8:45 am]

BILLING CODE 3510-25-M

#### University of California, San Diego; Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR Part 301).

A copy of the record pertaining to this decision is available for public review between 8:30 a.m. and 5:00 p.m. in Room 2119 of the Department of Commerce Building, 14th and Constitution Avenue NW., Washington, D.C. 20230.

Docket No. 81-00065. Applicant: University of California, San Diego, 3175 Miramar Road, La Jolla, California 92093. Article: Electrophoresis Apparatus, Type VAP5 with Accessories. Manufacturer: Beader & Hobein GmbH, West Germany. Intended use of article: See Notice on page 18565 in the Federal Register of March 25, 1981.

Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States. Reasons: The foreign article can continuously separate and collect the lysosome fraction from cultured human fibroblasts. The Department of Health and Human Services advises in its memorandum dated June 17, 1981 that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 81-23618 Filed 8-13-81; 8:45 am]

BILLING CODE 3510-25-M

#### University of Texas Health Science - Center; Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR Part 301).

A copy of the record pertaining to this decision is available for public review between 8:30 a.m. and 5:00 p.m. in Room 2119 of the Department of Commerce Building, 14th and Constitution Avenue NW., Washington, D.C. 20230.

Docket No. 81-00068. Applicant: University of Texas Health Science Center, 7703 Floyd Curl Drive, San Antonio, Texas 78284. Article:

Hemodialysis Membrane. Manufacturer: Asahi Medical Company Ltd., Japan. Intended use of article: See Notice on page 18565 in the Federal Register of March 25, 1981.

Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States. Reasons: The foreign article provides an effective pore size of 0.2 micron which permits effective clearance of proteins. The Department of Health and Human Services advises in its memorandum dated June 17, 1981 that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 81-23620 Filed 8-13-81; 8:45 am]

BILLING CODE 3501-25-M

#### Veterans Administration Medical Center; Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR Part 301).

A copy of the record pertaining to this decision is available for public review between 8:30 A.M. and 5:00 P.M. in Room 2119 of the Department of Commerce Building, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Docket Number 81-00062. Applicant: Veterans Administration Medical Center, 3350 La Jolla Village Drive, San Diego, California 92161. Article: Artificial Kidney Membrane Package. Manufacturer: Daicel Chemical Industries, Ltd., Japan. Intended use of



article: See Notice on page 18565 in the *Federal Register* of March 25, 1981.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The foreign article provides a specially designed membrane and a supporting structure that permits removal of plasma water from whole blood with a specified blood leak rate of less than 3%. The Department of Health and Human Services advises in its memorandum dated June 17, 1981 that (1) the capabilities of the foreign article described above are pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 81-23617 Filed 8-13-81; 8:45 am]

BILLING CODE 3510-25-M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### Fishermen's Contingency Fund

AGENCY: National Oceanic and Atmospheric Administration/Department of Commerce.

ACTION: Notice of Agency recommendation on a claim filed under Title IV, Outer Continental Shelf Lands Act Amendments of 1978, as amended (Title IV).

SUMMARY: Notice is given that the Agency intends to recommend to the NOAA Office of Administrative Law Judges, which will decide the matter, that claim number FCF-14-80 be declared ineligible for compensation on its face because the damage which is the basis for the claim was caused by a financially responsible party.

Interested persons have until August 27, 1981, to request that the Administrative Law Judge conduct an

expedited oral hearing concerning the claim, or to request to be admitted as parties to any hearing on the claim.

DATE: Requests for oral hearing or to be admitted as a party must be received by August 27, 1981.

ADDRESS: Send requests to: NOAA Office of General Counsel (GCEL), Room 275, Page 1 Building, 2001 Wisconsin Avenue, N.W., Washington, D.C. 20235.

FOR FURTHER INFORMATION CONTACT: Stephen J. Powell or Harry Feehan (address above). Telephone: (202) 254-8350.

SUPPLEMENTARY INFORMATION: Title IV, 43 U.S.C. 1841, established the Fishermen's Contingency Fund (Fund) to compensate commercial fishermen for gear damage and lost profits caused by items associated with oil and gas activities on the Outer Continental Shelf.

At the time at which the damage was incurred, the law declared that no claim which was submitted under it could be paid if, among other considerations, "the damage set forth in the claim was caused by materials, equipment, tools, containers, or other items attributable to a financially responsible party" 43 U.S.C. 1843(c)(2)(A). In relevant part, the implementing regulations defined "a responsible party" as a "financially solvent person" (50 CFR 296.2). And they defined "person" as including a "partnership, corporation \* \* \* or other entity" (50 CFR 296.2).

Pursuant to 50 CFR 296.8(b)(1), the Chief, Financial Services Division (Chief, FSD), National Marine Fisheries Service (NMFS), shall determine whether a claim is eligible for compensation. If he determines that it is not eligible on the ground, among others, that it was based on damages attributable to a financially responsible party, he is to refer the claim to the NOAA General Counsel (50 CFR 296.8(b)(4)). Upon review of the determination of the Chief, FSD, the General Counsel will decide whether to send the claim—along with an official agency recommendation that it be denied—to the NOAA Office of Administrative Law Judges for an expedited proceeding on the issue of eligibility (50 CFR 296.8(d)(1)). An Administrative Law Judge may conduct an expedited proceeding confined to this issue if the General Counsel recommends denial of the claim as ineligible on its face (50 CFR 296.10(f)(1)). If the Administrative Law Judge determines that the claim is eligible for compensation, he shall return the claim to the Chief, FSD, for further processing (50 CFR 296.10(f)(2)).

Such a decision is not a final decision which is appealable to an appropriate circuit court under 43 U.S.C. 1845(i) (*Idem.*). If the Administrative Law Judge declares the claim to be ineligible for compensation, this decision is appealable within 120 days of its date to the circuit court (50 CFR 296.10(f)(3)).

Claim number FCF-14-80 was filed on March 7, 1980, and seeks compensation of \$10,570.41—of which \$3,570.41 is for damage to fishing gear and \$7,000 is for economic loss—on account of Claimant's having hung his gear on an underwater obstruction on January 29, 1980, at coordinates 28°33.0'N and 91°21.0'W. The obstruction was a pipeline owned by a company which the General Counsel has decided was a financially responsible party within the meaning of the statute and the implementing regulations.

Notice of receipt of the claim by the Chief, FSD, was published in the *Federal Register* on September 2, 1980 (45 FR 58180). This notice gave interested persons, as defined in 50 CFR 296.2, 30 days in which to advise the Chief, FSD, that they wished to submit evidence concerning the claim, or be admitted as parties to any hearing held in respect to the claim. No response was received.

The Chief, FSD, has forwarded the claim to the NOAA General Counsel with a recommendation that it be forwarded to an Administrative Law Judge for an expedited proceeding on whether the claim is eligible for compensation. After reviewing the claim, the General Counsel has determined that the claim is ineligible for compensation, and will forward the claim to the NOAA Office of Administrative Law Judges with the recommendation that the claim be denied, and without an oral hearing. However, the General Counsel will not oppose a hearing should Claimant, or any interested party, desire a hearing.

Any interested person or a claimant who objects to these recommendations may request that the Administrative Law Judge who will be assigned to the case conduct an oral hearing concerning the claim. Any interested person may also request to be admitted as a party to any hearing concerning the claim. In either event, the request must be in writing and must be filed with General Counsel at the address and by the date set out above. If the request is to be admitted as a party, the request must state why it was not filed in a timely manner under 50 CFR 296.8(a)(3)(v). The Administrative Law Judge will rule on all such requests under 50 CFR 296.10(a)(3). Any interested person may obtain a copy of such portions of the



claim as are disclosable by law by writing to the General Counsel at the above address.

No sooner than August 27, 1981, the General Counsel will refer the claim, together with the agency recommendation and any requests received in response to this notice, to the NOAA Office of Administrative Law Judges for an expedited hearing in the eligibility issue.

Final regulations governing the Title IV Program were published on January 24, 1980 (45 FR 6062), and July 2, 1980 (45 FR 44912).

Signed at Washington, D.C. this 11th day of August, 1981.

William G. Gordon,

*Acting Deputy Administrator for Fisheries,  
National Marine Fisheries Service.*

[FR Doc. 81-23816 Filed 8-13-81; 8:45 am]

BILLING CODE 3510-22-M

#### 1980/81 Marine Mammal Annual Report; Availability

**AGENCY:** National Marine Fisheries Service.

**ACTION:** Notice of availability of 1980/81 Marine Mammal Annual Report.

**SUMMARY:** On July 31, 1981, the Secretary of Commerce transmitted to the Congress the annual report on the administration of the Marine Mammal Protection Act of 1972 as required by Section 103(f) of the Act. This report covers the period April 1, 1980 to March 31, 1981. The Assistant Administrator for Fisheries, National Marine Fisheries Service, informs the public that the report is available and that any interested individual may obtain a copy by requesting it from the Service.

**ADDRESS:** A copy may be obtained from the Office of Marine Mammals and Endangered Species, National Marine Fisheries Service, U.S. Department of Commerce, Washington, D.C. 20235. Requests will be filled until the supply is exhausted.

**FOR FURTHER INFORMATION CONTACT:** Margaret C. Lorenz, Editor, Office of Marine Mammals and Endangered Species, National Marine Fisheries Service, Washington, D.C. 20235 (202/634-7529).

**SUPPLEMENTARY INFORMATION:** The Marine Mammal Protection Act of 1972 assigns responsibility for marine mammals of the Order Cetacea (whales and dolphins) and the Suborder Pinnipedia (seals and sea lions), except walrus, to the Department of Commerce. Under authority delegated to it, the National Marine Fisheries Service carries out those responsibilities. The

annual report reviews the Service's marine mammal related activities.

The status of stocks section of the report includes a discussion of the orders, suborders, families, and species of animals that are of interest to the Service and tables listing their estimated population numbers.

The report reviews the scientific research and public display permit program, commercial fishing permits for incidental take of marine mammals, and international and law enforcement activities as well as management and research programs for porpoises involved in the tuna purse seine fishery, bottlenose dolphins, bowhead whales, Dall's porpoises, gray whales, humpback whales, Hawaiian monk seals, and pinnipeds in the Channel Islands National Park, California and the Pribilof Islands, Alaska.

Dated: August 7, 1981.

Richard B. Roe,

*Acting Director, Office of Marine Mammals  
and Endangered Species, National Marine  
Fisheries Service.*

[FR Doc. 81-23813 Filed 8-13-81; 8:45 am]

BILLING CODE 3510-22-M

#### Mid-Atlantic Fishery Management Council; Public Meetings

**AGENCY:** National Marine Fisheries Service, NOAA.

**SUMMARY:** The Mid-Atlantic Fishery Management Council, established by Section 302 of the Magnuson Fishery Conservation and Management Act (Pub. L. 94-265), will meet to discuss the Surf Clam/Ocean Quahog Fishery Management Plan (FMP) (reopening of closed areas); Bluefish FMP, status of other FMP's; foreign fishing applications, as well as other fishery management and administrative matters.

**DATES:** The public meetings will convene on Tuesday, September 8, 1981, at approximately noon, and will adjourn on Wednesday, September 9, 1981, at approximately 4 p.m. The meetings may be lengthened or shortened, depending upon progress on the agenda.

**ADDRESS:** The meetings will take place at the Best Western Airport Motel, Philadelphia International Airport, Route 291, Philadelphia, Pennsylvania.

**FOR FURTHER INFORMATION CONTACT:** Mid-Atlantic Fishery Management Council, Room 2115—Federal Building, North and New Streets, Dover, Delaware 19901, Telephone: (302) 674-2331.

Dated: August 11, 1981.

Jack L. Falls,

*Chief, Administrative Support Staff, National  
Marine Fisheries Service.*

[FR Doc. 81-23813 Filed 8-13-81; 8:45 am]

BILLING CODE 3510-22-M

#### COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

**Adjusting Import Restraint Levels for Certain Cotton, Wool, and Man-Made Fiber Textile Products From the Republic of Korea**

**AGENCY:** Committee for the Implementation of Textile Agreements.

**ACTION:** (1) Granting increases for swing for the cotton and man-made fiber textile products in Group I (Categories 300-320, 330, 360-369, 600-627, 630, and 665-669), for women's, girls' and infants' wool suits in Category 444, for woven shirts of man-made fibers in part of Category 640 (all T.S.U.S.A. numbers except 380.0455, 380.8431 and 380.8433), and for woven blouses of man-made fibers in Category 641, produced or manufactured in the Republic of Korea and exported during the agreement year which began on January 1, 1981. Carryover from the 1980 agreement year is also being applied to the level for Category 444.

(2) Controlling down and feather-filled apparel in Categories 353/354/653/654 at the agreed level of 206,908 dozen during the agreement year which began on January 1, 1981.

(A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on February 28, 1980 (45 FR 13172), as amended on April 23, 1980 (45 FR 27463), August 12, 1980 (45 FR 53506), December 24, 1980 (45 FR 85142) and May 5, 1981 (46 FR 25121)).

**SUMMARY:** The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 23, 1977, as amended, between the Governments of the United States and the Republic of Korea provides, among other things, for percentage increases in certain specific category ceilings during an agreement year (swing) and for the carryover of shortfalls in certain categories from the previous agreement year (carryover). Pursuant to those provisions of the bilateral agreement, and at the request of the Government of the Republic of Korea, the import restraint levels established for Group I (Categories 300-320, 330, 360-369, 600-627, 630, and 665-669), and Categories 444, 640pt. and 641



are being increased for the twelve-month period which began on January 1, 1981 and extends through December 31, 1981. In addition, the United States Government has decided to control imports of down and feather-filled apparel in Categories 353/354/653/654 at the agreed level of 206,908 dozen during the agreement year which began on January 1, 1981.

**EFFECTIVE DATE:** August 17, 1981.

**FOR FURTHER INFORMATION CONTACT:**

William Boyd, International Trade Specialist, Office of Textiles and Apparel, U. S. Department of Commerce, Washington, D.C. 20230 (202/377-5423).

**SUPPLEMENTARY INFORMATION:** On December 30, 1980, a letter dated December 24, 1980 from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs was published in the Federal Register (45 FR 85811) which established import restraint levels for certain specified categories of cotton, wool and man-made fiber textile products, produced or manufactured in the Republic of Korea and exported to the United States during the twelve-month period which began on January 1, 1981 and extends through December 31, 1981. In accordance with the terms of the bilateral agreement and at the request of the Government of the Republic of Korea, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs, in the letter published below, to prohibit entry into the United States for consumption and withdrawal from warehouse for consumption of textile products in Group I (Categories 300-320, 330, 360-369, 600-627, 630 and 665-669) and Categories 444, 640pt. and 641, produced or manufactured in the Republic of Korea, in excess of the designated adjusted levels of restraint during the twelve-month period which began on January 1, 1981. The Chairman of the Committee for the Implementation of Textile Agreements further directs the Commissioner of Customs to establish a level of restraint for Categories 353/354/653/654 of 206,909 dozen for the agreement year which began on January 1, 1981. This level has not been adjusted to account for any imports after December 31, 1980. These imports have amounted to 45,320 dozen during the January-July period of 1981.

Paul T. O'Day,

*Chairman, Committee for the Implementation of Textile Agreements.*

August 11, 1981.

**Committee for the Implementation of Textile Agreements**

Commissioner of Customs, Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: On December 24, 1980, the Chairman, Committee for the Implementation of Textile Agreements, directed you to prohibit entry for consumption, or withdrawal from warehouse for consumption during the twelve-month period beginning on January 1, 1981 and extending through December 31, 1981 of cotton, wool and man-made fiber textile products in certain specified categories, produced or manufactured in the Republic of Korea, in excess of designated levels of restraint. The Chairman further advised you that the levels of restraint are subject to adjustment.<sup>1</sup>

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 23, 1977, as amended, between the Governments of the United States and the Republic of Korea; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed to prohibit, effective on August 17, 1981, to amend the twelve-month levels of restraint established for Group I (Categories 300-320, 330, 360-369, 600-627, 630 and 665-669) and Categories 444, 640pt., and 641 to the following:

| Category                                         | Amended 12-month level of restraint <sup>1</sup> |
|--------------------------------------------------|--------------------------------------------------|
| 300-320, 330, 360-369, and 600-627, 630, 665-669 | * 162,478,778                                    |
| 444                                              | * 4,531                                          |
| 640 <sup>2</sup>                                 | * 1,678,668                                      |
| 641                                              | * 1,044,513                                      |

<sup>1</sup> The levels of restraint have not been adjusted to reflect any imports after December 31, 1980.

<sup>2</sup> In Category 640, all TSUSA numbers except 380.0455, 380.8431 and 380.8433.

<sup>3</sup> Square yards equivalent.

<sup>4</sup> Dozen.

You are further directed, effective on August 17, 1981, to amend the directive of December 24, 1980 to prohibit entry for consumption, or withdrawal from warehouse for consumption, of textile products in Categories 353/354/653/654, produced or manufactured in the Republic of Korea and exported during the twelve-month period which began on January 1, 1981 in excess of 206,908 dozen.<sup>2</sup>

<sup>1</sup> The term "adjustment" refers to those provisions of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 23, 1977, as amended, between the Governments of the United States and the Republic of Korea, which provide, in part, that (1) within the aggregate and applicable group limits, specific levels of restraint may be exceeded by designated percentages; (2) these same levels may be increased for carryover and carryforward up to 11 percent of the applicable category limit; (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

<sup>2</sup> The level of restraint has not been adjusted to reflect any imports after December 31, 1980.

Textile products in Categories 353/354/653/654 which have been exported to the United States prior to January 1, 1981, shall not be subject to this directive.

Textile products in Categories 353/354/653/654 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The actions taken with respect to the Government of the Republic of Korea and with respect to imports of cotton, wool and man-made fiber textile products from the Republic of Korea have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

Paul T. O'Day,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 81-22616 Filed 8-13-81; 8:45 am]

BILLING CODE 3510-25-M

**Adjusting the Import Restraint Level for Certain Cotton Textile Products From Pakistan**

August 11, 1981.

**AGENCY:** Committee for the Implementation of Textile Agreements.

**ACTION:** Granting an increase for swing from 26,411,484 numbers to 29,052,632 numbers for cotton terry and other pile towels in Category 363, produced or manufactured in Pakistan and exported during the eighteen-month period which began on January 1, 1981.

(A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on February 28, 1980 (45 FR 13172), as amended on April 23, 1980 (45 FR 27463), August 12, 1980 (45 FR 53506) December 24, 1980 (45 FR 85142) and May 5, 1981 (46 FR 25121))

**SUMMARY:** The Bilateral Cotton Textile Agreement of January 4 and 9, 1978, as amended, between the Governments of the United States and Pakistan provides, among other things, for percentage increases in certain specific category ceilings during an agreement year (swing). Pursuant to the terms of the bilateral agreement, and at the request of the Government of Pakistan, the import restraint level established for Category 363 is being increased to



29,052,632 numbers for the eighteen-month period which began on January 1, 1981 and extends through June 30, 1982.

**EFFECTIVE DATE:** August 12, 1981.

**FOR FURTHER INFORMATION CONTACT:** Carl J. Ruths, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. 20230 (202/377-5423).

**SUPPLEMENTARY INFORMATION:** On December 24, 1980 there was published in the *Federal Register* (45 FR 85140) a letter dated December 19, 1980 from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs, which established levels of restraint for certain specified categories of cotton textile products, including Category 363, produced or manufactured in Pakistan and exported to the United States during the eighteen-month period which began on January 1, 1981 and extends through June 30, 1982. In accordance with the terms of the bilateral agreement and at the request of the Government of Pakistan, the United States Government has agreed to increase the level of restraint for cotton textile products in Category 363 to 29,052,632 numbers. In the letter published below the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to increase that level to the designated amount.

Paul T. O'Day,

*Chairman, Committee for the Implementation of Textile Agreement.*

August 11, 1981.

Commissioner of Customs,  
Department of the Treasury,  
Washington, D.C. 20229.

Dear Mr. Commissioner: On December 19, 1980, the Chairman, Committee for the Implementation of Textile Agreements, directed you to prohibit entry for consumption, or withdrawal from warehouse for consumption, during the eighteen-month period beginning on January 1, 1981 and extending through June 30, 1982 of cotton textile products in certain specified categories, produced or manufactured in Pakistan, in excess of designated levels of restraint. The Chairman further advised you that the levels of restraint are subject to adjustment.<sup>1</sup>

Under the terms of the Arrangement Regarding International Trade in Textiles

done at Geneva on December 20, 1973, as extended on December 15, 1977; pursuant to the Bilateral Cotton Textile Agreement of January 4 and 9, 1978, as amended, between the Governments of the United States and Pakistan; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed to increase, effective on August 12, 1981, the eighteen-month level of restraint established for cotton textile products in Category 363 to 29,052,632 numbers.<sup>2</sup>

The actions taken with respect to the Government of Pakistan and with respect to imports of cotton textile products from Pakistan have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the *Federal Register*.

Sincerely,

Paul T. O'Day,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 81-23745 Filed 8-13-81; 8:45 am]

**BILLING CODE** 3510-25-M

## COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

### Procurement List 1981; Proposed Additions

**AGENCY:** Committee for Purchase From the Blind and Other Severely Handicapped.

**ACTION:** Proposed additions to procurement list.

**SUMMARY:** The Committee has received proposals to add to Procurement List 1981 commodities to be produced by and a service to be provided by workshops for the blind and other severely handicapped.

**COMMENTS MUST BE RECEIVED ON OR BEFORE:** September 16, 1981.

**ADDRESS:** Committee for Purchase From the Blind and Other Severely Handicapped, 2009 14th Street North, Suite 610, Arlington, Virginia 22201.

**FOR FURTHER INFORMATION CONTACT:** C. W. Fletcher (703) 557-1145.

**SUPPLEMENTARY INFORMATION:** This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed action.

<sup>2</sup>The level of restraint has not been adjusted to reflect any imports after December 31, 1980.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities and service listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities and service to Procurement List 1981, November 12, 1980 (45 FR 74836):

#### Class 7510

Pocket Planning Set, 7510-01-023-0348  
Refill, Pocket Planning Set, 7510-01-021-9654

#### Class 8415

Socks, Extreme Cold Weather, 8415-00-177-7992, 8415-00-177-7993, 8415-00-177-7994

#### SIC 7369

Commissary Shelf Stocking and Custodial Services, Hanscom Air Force Base, Massachusetts.

[FR Doc. 81-23745 Filed 8-13-81; 8:45 am]

**BILLING CODE** 6820-23-M

## Procurement List 1981; Additions

**AGENCY:** Committee for Purchase from the Blind and Other Severely Handicapped.

**ACTION:** Additions to procurement list.

**SUMMARY:** This action adds to Procurement List 1981 a service to be provided by and commodities to be produced by workshops for the blind and other severely handicapped.

**EFFECTIVE DATE:** August 14, 1981.

**ADDRESS:** Committee for Purchase from the Blind and Other Severely Handicapped, 2009 14th Street North, Suite 610, Arlington, Virginia 22201.

**FOR FURTHER INFORMATION CONTACT:** C. W. Fletcher (703) 557-1145.

**SUPPLEMENTARY INFORMATION:** On May 15, 1981 and June 26, 1981, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (46 FR 26806, and 46 FR 33069) of proposed additions to Procurement List 1981, November 12, 1980 (45 FR 74836).

After consideration of the relevant matter presented, the Committee has determined that the service and commodities listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c, 85 Stat. 77.

Accordingly, the following service and commodities are hereby added to Procurement List 1981:

#### SIC 7369

Commissary Shelf Stocking and Custodial Service, Lackland Air Force Base, Texas

<sup>1</sup>The term "adjustment" refers to those provisions of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of January 4 and 9, 1978, as amended, between the Governments of the United States and Pakistan, which provide, in part, that (1) within the aggregate and group limits, specific levels of restraint may be exceeded by designated percentages; (2) these same levels may be increased for carryover and carryforward; and, (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.



## Class 7340

Flatware, Plastic, Picnic, 7340-00-170-8374,  
7340-00-205-3187, 7340-00-205-3342

(For GSA Regions 1, 8, 9, 10)

C. W. Fletcher,

Executive Director.

[FR Doc. 81-22792 Filed 8-13-81; 8:45 am]

BILLING CODE 6620-33-M

## COUNCIL ON ENVIRONMENTAL QUALITY

### Agency Implementation of CEQ's NEPA Regulations

August 6, 1981.

**AGENCY:** Council on Environmental Quality, Executive Office of the President.

**ACTION:** Request for public comments.

**SUMMARY:** This notice requests public comments on Federal agency implementation of CEQ's NEPA regulations (40 CFR Part 1500 *et seq.*).

**ADDRESS:** Comments should be addressed to General Counsel, Council on Environmental Quality, 722 Jackson Place, N.W., Washington, D.C. 20006; Attention: NEPA Regulations Oversight.

**DATE:** Comments should be received on or before October 13, 1981.

**FOR FURTHER INFORMATION CONTACT:** Nancy Nord, General Counsel, Council on Environmental Quality, 722 Jackson Place, N.W.; (202) 395-5750.

**SUPPLEMENTAL INFORMATION:** Since the creation of the Council on Environmental Quality in 1970 by the National Environmental Policy Act (NEPA), CEQ has been responsible for overseeing federal efforts to comply with NEPA. In 1970, the Council issued Guidelines for the preparation of environmental impact statements. In 1973 the Guidelines were revised to take into account the first three years of experience. However, many problems still existed, and CEQ conducted a broad investigation resulting in a 1976 report called "Environmental Impact Statements: An Analysis of Six Years' Experience by Seventy Federal Agencies." In 1977 CEQ began a new rulemaking process, including public hearings and extensive consultations with all interested organizations, especially the business community, state and local governments, and environmental groups. Final regulations were issued on November 29, 1978, and became effective and binding upon most federal agencies July 30, 1979, and for all remaining agencies on November 30, 1979.

Under the NEPA regulations each federal agency must adopt implementing

procedures after consultation with CEQ (see 40 CFR 1507.3). The Council published its Tenth Progress Report on Agency Implementing Procedures on May 7, 1981.

Additional guidance, as provided by 40 CFR 1506.7, on the NEPA process was published by CEQ on general policy and procedures (Memorandum, Forty Most Asked Questions; March 23, 1981; 46 FR 18026-18038); and on the scoping process (Memorandum; April 30, 1981).

The Council's regulations and agency procedures issued pursuant thereto were designed to make the NEPA process more useful to decisionmakers and the public, reduce paperwork and delay, and establish procedures for referrals in case of interagency conflicts. As part of the Council's NEPA oversight responsibilities, and to further the goals of Executive Order 12291, we are interested in the public's views on how NEPA procedures issued by the various agencies have fostered implementation of NEPA. The Council wishes to solicit comments on the following questions:

1. Is the scoping process a useful procedure for identifying controversial issues?
2. Is the scoping process used at an appropriate stage in the development of agency proposals?
3. Is tiering being used to minimize repetition in environmental assessments and in environmental impact statements?
4. How categorical exclusions been adequately identified and defined?
5. Are environmental impact statements emphasizing analysis or description?
6. Are environmental documents being integrated with any other analyses required prior to taking action?
7. To what extent has duplication with state and local procedures been reduced, especially in states with legal requirements similar to NEPA?
8. Are there suggestions for reducing costs in preparation of environmental impact statements?
9. Are there suggestions for eliminating delays in the preparation of environmental impact statements?
10. To what extent, if any, have agencies required an applicant to submit information in excess of that needed to make a decision on an application?
11. What day-to-day agency practices could be improved to assure better compliance with NEPA?

By soliciting comments the Council wishes to identify possible methods by which the goals of NEPA can be more precisely and expeditiously accomplished. All suggestions and comments will be carefully considered. Commenters are requested to be as

specific as possible when commenting; it is preferable that particular cases or examples be cited. Limited resources do not allow us to investigate each case, but we can contact the agencies involved to secure their general compliance with NEPA and the regulations. The Council would appreciate receiving any responses on or before October 13, 1981.

**Note.**—Attached is a related memorandum for Federal agency NEPA liaisons.

Nancy Nord,

General Counsel.

### Memorandum for Federal Agency NEPA Liaisons—Revisions to Agency NEPA Procedures

August 6, 1981.

Since the issuance in 1979 of the Council's regulations implementing the National Environmental Policy Act (40 CFR 1500 *et seq.*), almost all agencies of the federal government have issued their own procedures, as required by § 1507.3 of the regulations. Some agencies are now reviewing their existing procedures to accommodate new programs and to assure that they are benefiting from their recent experiences under the regulations. For example, agencies that were hesitant to use categorical exclusions, tiering, or other provisions in the regulations are now taking a second look at those provisions. The Council encourages such evaluations. We will be working with agencies to improve their efforts to use environmental documents to achieve the goals of the regulations: to make better decisions, and to reduce paperwork and delay.

Section 1507.3 ("Agency Procedures") states that "The procedures shall be adopted only after an opportunity for public review and after review by the Council for conformity with the Act and these regulations . . . Agencies shall continue to review their policies and procedures and in consultation with the Council to revise them as necessary to ensure full compliance with the purposes and provisions of the Act."

Agencies considering revisions to their NEPA procedures are requested to consult the Council during the early stages of their review so that CEQ can advise them on the regulations and on the practices of other agencies. Agencies should make a special effort to consult other agencies with similar programs to coordinate their procedures, especially for programs requesting similar information from applicants.

The cover letter transmitting proposed revisions should identify and explain any important or controversial changes. Proposed revisions should be transmitted to the Council prior to publication in the Federal Register and should be addressed to the CEQ General Counsel.

After Federal Register publication and completion of the public review period, the agency should send us the proposed final version, including the preamble with responses to comments, on a marked-up copy of the Federal Register version. The Council



will review the proposed final procedures as expeditiously as possible and in no event will this review take longer than 30 days.

Thank you for your cooperation.

Nancy Nord,  
General Counsel.

[FR Doc. 81-23563 Filed 8-13-81; 8:45 am]

BILLING CODE 3125-01-M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### Defense Intelligence Agency Advisory Committee; Closed Meeting

Pursuant to the provisions of Subsection (d) of Section 10 of Pub. L. 92-463, as amended by Section 5 of Pub. L. 94-409, notice is hereby given that a closed meeting of a Panel of the DIA Advisory Committee will be held as follows:

Thursday & Friday, 10-11, September 1981, Pomponio Plaza, Rosslyn, Virginia. The entire meeting, commencing at 0900 hours each day is devoted to the discussion of classified information as defined in Section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. Subject matter will be used in a study on Soviet naval trends.

Dated: August 10, 1981.

M. S. Healy,  
OSD Federal Register Liaison Officer,  
Washington Headquarters Services,  
Department of Defense.

[FR Doc. 81-23613 Filed 8-13-81; 8:45 am]

BILLING CODE 3810-01-M

#### Overseas Dependents Schools; National Advisory Panel on the Education of Handicapped Dependents; Meeting

The National Advisory Panel on the Education of Handicapped Dependents will meet in open session from 9:00 AM to 4:00 PM, 8-10 September 1981, at the Holiday Inn, 2460 Eisenhower Avenue, Alexandria, Virginia.

The mission of the Panel is to advise the Director, DoD Dependents Schools (DoDDS), of unmet needs within the system for the education of handicapped children, to comment publicly on rules and regulations proposed for issuance by the Office of Dependents Schools (ODS) concerning education for the handicapped and on procedures for distribution of funds, and to assist ODS in developing and reporting all data and evaluation as may assist the Director in performance of his responsibilities under section 618 of Pub. L. 94-142.

The Panel will review the following:  
The status of special education in

DoDDS; DoDDS's response to Advisory Panel recommendations, personnel development, parent education, intradepartmental cooperation, administration, and the budget.

This meeting is open to the public; however, due to space constraints, anyone wishing to attend should contact the ODS coordinator, Dr. Diane Goltz, Chief, Special Education, 2461 Eisenhower Avenue, Alexandria, Virginia 22331. (202) 325-7810.

M. S. Healy,

OSD Federal Register Liaison Officer,  
Washington Headquarters Services,  
Department of Defense.

August 10, 1981.

[FR Doc. 81-23614 Filed 8-13-81; 8:45 am]

BILLING CODE 3810-01-M

#### Defense Intelligence Agency Advisory Committee; Closed Meeting

Pursuant to the provisions of Subsection (d) of Section 10 of Pub. L. 92-463, as amended by Section 5 of Pub. L. 94-409, notice is hereby given that a closed meeting of the DIA Advisory Committee will be held as follows:

Thursday & Friday, 17-18 September 1981, The Pentagon, Washington, D.C.

The entire meeting, commencing at 0900 hours each day is devoted to the discussion of classified information as defined in Section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. The Committee will receive briefings on and discuss several current critical intelligence issues and advise the Director, DIA on related scientific and technical intelligence matters.

Dated: August 11, 1981.

M. S. Healy,

OSD Federal Register Liaison Officer,  
Washington Headquarters Services,  
Department of Defense.

[FR Doc. 81-23746 Filed 8-13-81; 8:45 am]

BILLING CODE 3810-01-M

## DEPARTMENT OF ENERGY

#### Energy Extension Service (EES) and State Energy Conservation (SECP) Regional Program Support Grants: Availability of Funding

AGENCY: Department of Energy.

ACTION: Notice of availability of funding.

SUMMARY: This document announces the issuance of a Program Solicitation DE-FG41-81R197128 by the Department of Energy, Office of Regional Activities-Boston (ORA-Boston). The Solicitation invites grant application from states located in New England for funding of

projects in support of the states' EES and SECP activities.

ADDRESS: Department of Energy, Office of Regional Activities, 150 Causeway Street, Boston, MA 02114.

#### FOR FURTHER INFORMATION CONTACT:

C. G. McGowan, State and Local Conservation Programs, Louise S. Urgo, Administration, Grant Management (617) 223-5207.

#### SUPPLEMENTARY INFORMATION:

- I. Background
- II. Eligible Grantees
- III. Eligible Activities

#### I. Background

The Department of Energy, Office of Regional Activities-Boston is making financial assistance available to the states located in the region to support their EES and SECP program.

The central focus of the EES and SECP programs is to foster energy conservation through development and implementation of comprehensive state plans, provision of financial and technical assistance and outreach programming directed toward small businesses and individuals, both residential and commercial consumers of energy, and state and local governments. In this context, energy conservation means efficient energy use or the utilization of renewable energy resources.

#### II. Eligible Grantees

Eligible grantees are the states located in the area serviced by the DOE-ORA Boston (Connecticut, Maine, Vermont, Massachusetts, New Hampshire, and Rhode Island).

#### III. Eligible Activities

Grants issued pursuant to this Notice are limited to the following projects:

1. Residential Energy Audit Support.
2. Local Government Energy Conservation Support.
3. Small Business Outreach Support.
4. Alternative Energy Outreach Support.
5. Energy Information Support.
6. Program Management Systems Support.

#### Application Procedures

The Program Solicitation and Grant Applications have been provided to each state in ORA-Boston and must be received no later than August 14, 1981. Application content and evaluation criteria are set forth in the Program Solicitation.

It is anticipated that grant awards will be issued by August 28, 1981.



Dated in Washington, DC on August 5, 1981.

Hilary J. Rauch,

Director, Procurement and Assistance Management.

[FR Doc. 81-23744 Filed 8-13-81; 8:45 am]

BILLING CODE 6450-01-M

### Conduct of Employees; Waiver for Jan W. Mares

Section 602(a) of the Department of Energy Organization Act (Pub. L. 95-91, hereinafter referred to as the "Act") prohibits a "supervisory employee" (defined in section 601(a) of the Act) of the Department from knowingly receiving compensation from, holding any official relation with, or having any pecuniary interest in any "energy concern" (defined in section 601(b) of the Act).

Section 602(c) of the Act authorizes the Secretary of Energy to waive the requirements of section 602(a) in cases of exceptional hardship or where the interest is a pension, insurance, or other similarly vested interest.

Mr. Jan W. Mares, who has been confirmed by the United States Senate for appointment to the position of Assistant Secretary for Fossil Energy of the Department of Energy, has a limited partnership interest in CPI Ltd. 1978/B, owns common stock and warrants to purchase common stock of Energy Resources Co., Inc., and owns common stock of Energy Resources, A.G. CPI Ltd. 1978/B, Energy Resources Co., Inc., and Energy Resources, A.G., have been determined to be energy concerns within the meaning of section 601(b) of the Act. He also has beneficial interests in two testamentary trusts that hold stock in Energy Resources Co., Inc., and Energy Resources, A.G., and have other energy concern holdings.

It has been established to my satisfaction that requiring immediate divestiture of the aforementioned energy concern interests would impose exceptional hardship on Mr. Mares within the meaning of section 602(c) of the Act. Accordingly, I have granted him a waiver of the divestiture requirements of section 602(a) of the Act—

(1) for a period of 120 days after commencement of his employment with the Department, with respect to his limited partnership interest in CPI Ltd. 1978/B and any energy concern stock received in exchange for such interest,

(2) for a period of 18 months after commencement of his employment with the Department, with respect to common stock and warrants to purchase common stock of Energy Resources, Co., Inc., and common stock of Energy Resources,

A.G., owned by him or by two testamentary trusts in which he has beneficial interests, and

(3) for a period of 15 days after commencement of his employment with the Department, with respect to common stock of energy concerns (other than Energy Resources Co., Inc., and Energy Resources, A.G.) held by two testamentary trusts in which he has beneficial interests.

In addition, Mr. Mares has an interest in a pension plan of the Union Carbide Corporation. I am satisfied that Mr. Mares' interest in the Union Carbide pension plan (under the Union Carbide Retirement Program) is a vested interest within the meaning of section 602(c) of the Act. Accordingly, I am waiving the divestiture requirements of section 602(a) with regard to that interest for the duration of Mr. Mares' employment with the Department.

Mr. Mares will be directed not to participate personally and substantially as a Government employee, while he holds the financial interests in energy concerns mentioned above, in any particular matter the outcome of which could have a direct and predictable effect on any such energy concern, unless the Secretary and the counselor agree that the financial interest in the particular matter is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect of him.

Dated: August 7, 1981.

James B. Edwards,  
Secretary.

[FR Doc. 81-23627 Filed 8-13-81; 8:45 am]

BILLING CODE 6450-01-M

### Economic Regulatory Administration

#### Plateau, Inc., Proposed Consent Order

**AGENCY:** Economic Regulatory Administration, DOE.

**ACTION:** Notice of Proposed Consent Order and opportunity for comment.

**SUMMARY:** The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces that it has executed a proposed Consent Order and provides an opportunity for public comment on the proposed Consent Order and potential claims against the refunds deposited in an escrow account established pursuant to the Consent Order.

**DATE:** Comments by: September 14, 1981.

**ADDRESS:** Send comments to Alan L. Wehmeyer, Chief, Crude Products Program Management Branch, Central Enforcement District, 324 East 11th Street, Kansas City, Missouri 64106.

### FOR FURTHER INFORMATION CONTACT:

Alan L. Wehmeyer, Chief, Crude Products Program Management Branch, Central Enforcement District, 324 East 11th Street, Kansas City, Missouri 64106. Phone (816) 374-5932.

**SUPPLEMENTARY INFORMATION:** On July 29, 1981, the Office of Enforcement of the ERA executed a Consent Order with Plateau, Inc. (Plateau). Under 10 CFR 205.199(b), a Consent Order which involves a sum of \$500,000 or more in the aggregate, excluding penalties and interest, becomes effective only after the DOE has received comments with respect to the proposed Consent Order. Although the ERA has signed and tentatively accepted the proposed Consent Order, the ERA may, after consideration of the comments it receives, withdraw its acceptance and, if appropriate, attempt to negotiate an alternative Consent Order.

### I. The Consent Order

Plateau, with its home office located in Albuquerque, New Mexico, is engaged in the refining of crude oil and sale of covered products, and is subject to the Mandatory Petroleum Price and Allocation Regulations at 10 CFR Parts 210, 211, and 212. To resolve certain civil actions which could be brought by the Office of Enforcement of the Economic Regulatory Administration as a result of its audit of Plateau, the ERA Office of Enforcement and Plateau entered into a Consent Order, the significant terms of which are as follows:

1. The Office of Enforcement has examined Plateau's books and records and reviewed all pertinent matters relating to Plateau's compliance with the DOE petroleum price and allocation regulations in effect during the period from December 1, 1973 through January 28, 1981. All civil matters pertaining to compliance with the DOE petroleum price and allocation regulations by Plateau in sales and allocation of covered products during the period December 1, 1973 through January 28, 1981 are resolved by this Consent Order.

2. Plateau will refund the aggregate amount of \$1,500,000 which includes interest through the date on which the Consent Order becomes effective, plus further interest as specified in the Consent Order.

3. Execution of the Consent Order constitutes neither an admission by Plateau nor a finding by DOE that Plateau has violated any statutes or applicable regulations of the Cost of Living Council, the Federal Energy Office, the Federal Energy Administration or the Department of Energy.



4. The provisions of 10 CFR 205.199], including the publication of this Notice, are applicable to the Consent Order.

## II. Disposition of Refunded Overcharges

In this Consent Order, Plateau agrees to refund, in full settlement of any civil liability with respect to actions which might be brought by the Office of Enforcement, ERA, arising out of the transactions specified in I.1. above, the sum of \$1,500,000 within 24 months after the Consent Order becomes effective. Plateau agrees to refund the sum of \$1,500,000 in the form of checks made payable to the United States Department of Energy and delivered to the Director of Enforcement, ERA. These funds will remain in a suitable account pending the determination of their proper disposition.

The DOE intends to distribute the refund amounts in accordance with applicable laws and regulations. Accordingly, distribution of such refunded overcharges requires that only those "persons" (as defined at 10 CFR 205.2) who actually suffered a loss as a result of the transactions described in the Consent Order receive appropriate refunds. Because of the petroleum industry's complex marketing system, overcharges may have been passed through as higher prices to subsequent purchasers or offset through devices such as the Old Oil Allocation (Entitlements) Program, 10 CFR 211.67. In fact, the adverse effects of the overcharges may have become so diffused that it is a practical impossibility to identify specific, adversely affected persons, in which case disposition of the refunds will be made in the general public interest by an appropriate means such as payment to the Treasury of the United States pursuant to 10 CFR 205.199(a).

## III. Submission of Notices of Claim

**A. Potential Claimant:** Interested persons who believe that they have a claim to all or a portion of the refund amount should provide written notification of the claim to the ERA at this time. Proof of claims is not now being required. Written notification to the ERA at this time is requested primarily for the purpose of identifying valid potential claims to the refund amount. After potential claims are identified, procedures for the making of proof of claims may be established. Failure by a person to provide written notification of a potential claim within the comment period for this Notice may result in the DOE irrevocably disbursing the funds to other claimants or in the general public interest.

**B. Other Comments:** The ERA invites interested persons to comment on the terms, conditions, or procedural aspects of this Consent Order. You should submit your comments or written notification of a claim on or before September 14, 1981, to Alan L. Wehmeyer, Chief, Crude Products Program Management Branch, ERA Central Enforcement District, U.S. Department of Energy, 324 East 11th Street, Kansas City, Missouri 64106. You may obtain a free copy of the Consent Order by writing to the same address.

You should identify your comments or written notification of a claim on the outside of your envelope and on the documents you submit with the designation "Comments on Plateau Consent Order." We will consider all comments we receive within 30 days after the publication of this notice. You should identify any information or data which is, in your opinion, confidential and submit it in accordance with the procedures in 10 CFR 205.9(f).

Issued in Kansas City, Missouri on the 3rd day of August, 1981.

William D. Miller,  
District Manager, Economic Regulatory Administration.

Concurrence:  
David H. Jackson,  
Chief Enforcement Counsel, Central Enforcement District.

[FR Doc. 81-23028 Filed 8-13-81; 8:45 am]  
BILLING CODE 6450-01-M

## True Oil Co.; Proposed Remedial Order

Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy hereby gives notice of a Proposed Remedial Order which was issued to True Oil Company of Casper, Wyoming.

This Proposed Remedial Order charged True Oil Company with pricing violations in the amount of \$4.4 million in sales of propane, butane, and natural gasoline during the time period September 1, 1973 through October 31, 1978.

A copy of the Proposed Remedial Order, with confidential information deleted, may be obtained from William D. Miller, District Manager of Enforcement, 324 East 11th Street, Kansas City, Missouri 64106. On or before August 31, 1981, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, 2000 M Street, N.W., Washington, D.C., 20401, in accordance with 10 CFR 205.193.

Issued in Kansas City, Missouri, on the 6th day of August 1981.

William D. Miller,  
District Manager, Central Enforcement District.

David H. Jackson,  
Chief, Enforcement Counsel, Central Enforcement District.

[FR Doc. 81-25743 Filed 8-13-81; 8:45 am]  
BILLING CODE 6450-01-M

## Federal Energy Regulatory Commission

[Docket No. RP81-98-000]

### ANR Storage Co.; Proposed Changes in FERC Gas Tariff

August 7, 1981.

Take notice that ANR Storage Company (ANR), on July 31, 1981, tendered for filing proposed changes in its FERC Gas Tariff, Original Volume No. 2 to become effective September 1, 1981. The proposed changes would increase the charges of ANR to all of its customers by \$8,815,344 over those currently in effect. However, certain charges currently in effect will be reduced by \$520,140 if a proposed Stipulation and Agreement pending before the Commission, which is incorporated in the charges herein proposed, is approved prior to the effective date of the charges proposed herein; in which case, the proposed charges would increase revenues of ANR by \$9,335,484.

ANR states that the principal reasons for the proposed changes are: Substantial additional investments in storage plant; increased costs of capital; and increased levels of operation and maintenance expense.

Copies of the filing were served on all the Company's customers.

Any party desiring to be heard or to protest said filings should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital Street, N.E., Washington, D.C. 20426, in accordance with §§1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before Aug. 19, 1981. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file



with the Commission and are available for public inspection.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 81-23702 Filed 8-13-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP81-425-000]

**Arkansas Louisiana Gas Co.;  
Application**

August 7, 1981.

Take notice that on July 17, 1981, Arkansas Louisiana Gas Company (Applicant), P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP81-425-000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon the sale of gas to the trustee in bankruptcy of the estate of Southeastern Development and Gas Authority for resale, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is submitted that by order issued January 29, 1981, in Docket No. CP80-335 Applicant was authorized to sell natural gas to Charles C. Kelly, Trustee in Bankruptcy of the estate of Southeastern Oklahoma Development and Gas Authority for resale for the supply of the town of Talihina, Oklahoma. Applicant further submits that such sales averaged 300 Mcf of gas per day.

Applicant states that through bankruptcy proceedings in the United States Bankruptcy Court for the Western District of Oklahoma, it purchased the gas distribution system serving Talihina, Oklahoma. As a result of such purchase, it is submitted, Applicant's sale of gas for resale to the operator of the Talihina distribution system is no longer necessary as Applicant is now delivering gas into its own distribution facilities for retail sale.

Applicant asserts, however, that its jurisdictional tap and metering facilities would continue to be used to deliver gas received into Applicant's distribution facilities. It is further asserted that all gas received into the Talihina distribution system would be consumed within the system and would be sold by Applicant at retail to consumers at Applicant's uniform statewide retail rates.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 28, 1981, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a

protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 81-23717 Filed 8-13-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER81-650-000]

**Arkansas Power & Light Co.; Filing**

August 7, 1981.

The filing Company submits the following:

Take notice that on July 31, 1981, Arkansas Power & Light Company (Arkansas) tendered for filing a proposed change in one of the Company's rate schedules:

Arkansas Power & Light Company Rate Schedule FERC No. 79.

According to Arkansas, Rate Schedule FERC No. 79 is a contract between the Company and the Conway Corporation of Conway, Arkansas. Arkansas indicates that the change in FERC No. 79 includes the addition of one point of delivery. Arkansas further indicates that the change in FERC No. 79 is proposed

to take effect on or about August 1, 1981. For this reason, the Company requests waiver of the Commission's notice requirements.

Arkansas states that there will be no change in rates or provisions in the schedule other than noted above.

According to Arkansas a copy of the filing has been mailed to the Conway Corporation.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before August 28, 1981. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 81-23718 Filed 8-13-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP81-414-000]

**Blue Dolphin Pipe Line Co.; Application**

August 7, 1981.

Take notice that on July 13, 1981, Blue Dolphin Pipe Line Company (Applicant), P.O. Box 2463, One Shell Plaza, Houston, Texas 77001, filed in Docket No. CP81-414-000 an application pursuant to Section 7(c) of the Natural Gas Act and Section 157.7(c) of the Regulations thereunder (18 CFR 157.7(c)) for a certificate of public convenience and necessity authorizing the construction and operation of facilities to make miscellaneous rearrangements on its system, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The stated purpose of this budget-type application is to augment Applicant's ability to act with reasonable dispatch in making miscellaneous rearrangements which would not result in any material change in the transportation and sales service presently rendered by Applicant.

Applicant states that the total cost of the proposed facilities would not exceed \$20,000. Applicant further states that the



cost of the proposed facilities would be financed with funds generated from internal sources.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 28, 1981, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-23719 Filed 8-13-81; 8:45 am]

BILLING CODE 6450-85-M

#### [Docket EF80-2011 (Remand)]

#### Bonneville Power Administration; Filing

August 10, 1981.

Take notice that on July 10, 1981, Bonneville Power Administration (BPA) filed a Response to Commission Order of November 21, 1980, Remanding Rates Without Prejudice. By order issued December 3, 1979, the Assistant Secretary for Resource Applications of the Department of Energy confirmed and

approved on an interim basis BPA's wholesale power rates and special contract rates effective December 20, 1979. In its order dated November 21, 1980, the Commission remanded to BPA, without prejudice, the 1979 wholesale power rates in order for BPA to demonstrate that such rates and charges were in accordance with applicable statutory standards [Order Remanding Rates Without Prejudice, Docket No. EF80-2011 (November 21, 1980)].

BPA states that its response is in the form of 13 exhibits which provide revenue estimates, load and sales data, BPA's data manipulation program for the period operating year 1980 through operating year 2021, projections of power loads and resources, an explanation of BPA's 1978 planning guidelines, BPA's explanation of data inputs and adjustments to its revenue estimate program output pertaining to revenue forecasting and a 1978 10-year secondary energy analysis.

According to BPA, with its response, the record is sufficient to demonstrate that the proposed rates are fixed and established (1) with a view to encouraging the widest diversified use of electric power at the lowest possible rates to consumers consistent with sound business principles and (2) having regard to the recovery of the cost of producing and transmitting such electric power, including amortization of the capital investment allocated to power over a reasonable period of years and payments provided for in section 11(b)(9) of the Federal Columbia River Transmission Systems Act (Pub. L. 93-454).

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.10). All such petitions or protests should be filed on or before August 31, 1981. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-23747 Filed 8-13-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket Nos. EF81-2011 and EF81-2021]

#### Bonneville Power Administration; Filing

August 11, 1981.

Take notice that on August 3, 1981, Bonneville Power Administration (BPA) submitted for filing an amendment to its original filing, filed June 24, 1981, in Docket Nos. EF81-2011 and EF81-2021. BPA states that the amendment is a supplement to the revenue Forecast Workpapers which explains: (1) the contents of each of the workpapers and (2) how they were used to forecast revenues under the present and proposed rates. BPA states that the supplement is not intended to provide a detailed explanation of how each component of the revenue forecast was developed. Rather, says BPA, the supplement indicates which documents were relied upon in forecasting the revenues.

Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before August 24, 1981. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this agreement are on file with the Commission and are available for the public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-23760 Filed 8-13-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER81-655-000]

#### Central Illinois Public Service Co.; Filing

August 11, 1981.

The filing Company submits the following:

Take notice that on August 3, 1981, Central Illinois Public Service Company tendered for filing Eighth Supplemental Agreement dated July 15, 1981, to the Interconnection Agreement dated May 1, 1966, between Central Illinois Public Service Company and Public Service Company of Indiana, Inc.

Copies of this filing have been sent to the Public Service Company of Indiana, the Public Service Commission of Indiana and the Illinois Commerce Commission.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8



and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before August 31, 1981. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 23748 Filed 8-13-81; 9:45 am]

BILLING CODE 6450-85-M

[Docket No. ER81-649-000]

#### Central Vermont Public Service Corp.; Filing

August 7, 1981.

The filing Company submits the following:

Take notice that on July 31, 1981, Central Vermont Public Service Corporation (Central Vermont) tendered for filing a proposed RS-1 Rate which is applicable to Central Vermont's subsidiary, Connecticut Valley Electric Company Inc. (Connecticut Valley) which is located in the State of New Hampshire. The proposed rate is requested to become effective for deliveries of power and energy on and after October 1, 1981.

The RS-1 is Rate intended to supersede the present R-8A Rate. Central Vermont states that the filing would increase revenues from the affected customer by an estimated \$122,311 or 1.8% for the twelve-month period preceding October 1, 1981.

According to Central Vermont, the RS-1 rate is a formula rate designed to reflect year-to-year changes in cost of service subject to the authority of the Commission to review the operation of the formula and order refunds. Central Vermont says that it has filed the rate in formula format to ensure recovery of the cost of providing the Connecticut Valley service, to simplify and ease administrative burdens and to recognize that over 85% of Central Vermont's cost of serving Connecticut Valley reflects payments to other utilities under jurisdictional rate schedules.

Central Vermont states that it has served copies of the filing on the affected customer and on the New Hampshire Public Utilities Commission.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825

North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before August 28, 1981. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 81-23720 Filed 8-13-81; 9:45 am]

BILLING CODE 6450-85-M

[Docket No. CP81-427-000]

#### Cities Service Gas Co.; Application

August 7, 1981.

Take notice that on July 20, 1981, Cities Service Gas Company (Applicant), P.O. Box 25128, Oklahoma City, Oklahoma 73125, filed in Docket No. CP81-427-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain pipeline taps, measuring, regulating and appurtenant facilities in order to render natural gas service to five right-of-way grantors, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to construct and operate facilities to provide natural gas service to five right-of-way grantors as follows:

1. Tap on Applicant's Overbrook 4-inch transmission pipeline in Osage County, Kansas, and construct measuring, regulating and appurtenant facilities for delivery of natural gas to Marvin W. Allen.

2. Tap on Applicant's Alden Storage Field 16-inch pipeline in Rice County, Kansas, and construct measuring, regulating and appurtenant facilities for delivery of natural gas to Wendell B. Carter.

3. Tap on Applicant's Maysville 20-inch transmission pipeline in McClain County, Oklahoma, and construct measuring, regulating and appurtenant facilities for delivery of natural gas to Eugene Hill.

4. Tap on Applicant's McLouth Storage Field 8-inch pipeline in Leavenworth County, Kansas, and construct measuring, regulating and

appurtenant facilities for delivery of natural gas to James P. Jeannin.

5. Tap on Applicant's Craig-Glavin 16-inch transmission pipeline in Johnson County, Kansas, and construct measuring, regulating and appurtenant facilities for delivery of natural gas to Joseph E. Ryckert.

Applicant states that it presently anticipates that the sales to Wendell B. Carter and James P. Jeannin would be made directly by Applicant and the sales to the other three customers would be made to The Gas Service Company for resale.

Applicant estimates the total cost of the facilities proposed herein to be approximately \$5,201 which costs Applicant would finance from treasury funds on hand. Applicant further estimates that the gas required annually by each domestic customer would be approximately 250 Mcf.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 28, 1981, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be



unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-23721 Filed 8-13-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER81-498-000]

**Cleveland Electric Illuminating Co.; Filing**

August 7, 1981.

The filing company submits the following:

Take notice that on July 31, 1981, the CAPCO Group filed Amendment No. 1, entered into as the 1st day of August, 1981, to the CAPCO Basic Operating Agreement, as amended September 1, 1980, which is on file with the Commission and identified by the Rate Schedule numbers shown for each listed Company:

|                                         | FERC<br>rate<br>schedule<br>No. |
|-----------------------------------------|---------------------------------|
| The Cleveland Electric Illuminating Co. | 15                              |
| Duquesne Light Co.                      | 15                              |
| Ohio Edison Co.                         | 144                             |
| Pennsylvania Power Co.                  | 35                              |
| The Toledo Edison Co.                   | 27                              |

Amendment No. 1 amends the CAPCO Basic Operating Agreement to add a new class of service in new Schedule "H" for the reservation and delivery of Non-CAPCO Power.

No new facilities will be installed nor will existing facilities be modified in order to provide the service covered by the proposed Amendment. It is requested that Amendment No. 1 become effective August 3, 1981.

Any person desiring to be heard or to make any protest with reference to the subject matter of this Notice should, on or before August 28, 1981, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, petitions to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules. The documents referred to herein are on file with the

Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-23671 Filed 8-13-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER81-658-000]

**Cleveland Electric Illuminating Co.; Filing**

August 10, 1981.

The filing company submits the following:

Take notice that on August 4, 1981, The Cleveland Electric Illuminating Company (CEI) tendered for filing an executed Service Agreement and Exhibits A and B thereto, providing for transmission by CEI of approximately 35 MW of power from the 345 kv interconnection point on CEI's Juniper-Canton Line with the Ohio Power Company to the City of Cleveland, Ohio (City) in accordance with the terms and conditions of CEI's FERC Transmission Service Tariff.

CEI has requested waiver of the FERC's 60-day notice requirement in order to permit commencement of transmission service on August 1, 1981.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before August 31, 1981. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-23781 Filed 8-13-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP81-433-000]

**Columbia Gas Transmission Corp.; Application**

August 7, 1981.

Take notice that on July 28, 1981, Columbia Gas Transmission Corporation (Applicant), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, filed in Docket No. CP81-433-000 an application pursuant to

Section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities and the sales of natural gas under new service agreements and for permission and approval to abandon certain natural gas facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant specifically proposes to construct and operate the following:

(1) 103.7 miles of 24-inch pipeline loop in six sections located in Bedford, Greene, Fayette, Somerset, Fulton, Franklin, Adams, and York Counties, Pennsylvania, and Washington County, Maryland;

(2) 7.3 miles of 16-inch pipeline loop in Orange County, New York;

(3) A 1,160 horsepower compressor unit at the Artemas compressor station in Bedford County, Pennsylvania;

(4) Two 1,350 horsepower compressor units at the Eagle compressor station in Chester County, Pennsylvania;

(5) A 1,160 horsepower compressor unit at the Easton compressor station in Northampton County, Pennsylvania;

(6) A 375 horsepower compressor unit at the Easton compressor station in Northampton County, Pennsylvania;

(7) Two 375 horsepower compressor units at the Renovo compressor station in Clinton County, Pennsylvania.

The cost of the proposed construction is estimated to be \$71,977,000 which would be financed from funds obtained from Applicant's parent, The Columbia Gas System, Inc.

It is asserted that certain of Applicant's existing wholesale customers have requested changes in their service levels as of the 1982-1983 winter period. Applicant states that these requested changes result in a net increase in the total daily entitlement of such customers of approximately 191,700 Mcf of natural gas per day. Furthermore, Applicant avers that one of its existing wholesale customers, Columbia Gas of Pennsylvania, Inc. (CPA), has experienced growth in the eastern portion of its market area and has requested increased deliveries within its existing total daily entitlement at points of delivery supplied via Applicant's 1804 System. It is stated that these increased deliveries would be offset by reduced requirements in the western portion of CPA's market area.

Applicant submits that to serve certain of the requested total daily entitlement increases and other requests for increased deliveries it would be necessary to increase the capability of Applicant's 1804 System between



Waynesburg and Eagle compressor stations, the Port Jervis System between Eagle compressor station and New York, and the A-5 System between the Port Jervis System and Nyack, New York. It would also be necessary to increase Applicant's capabilities to deliver exchange volumes to Transcontinental Gas Pipe Line Corporation (Transco) at Easton and Renovo compressor stations, it is asserted.

Applicant contends that the capacity deficiency in the Port Jervis and A-5 Systems would be overcome by the proposed construction and operation of 7.3 miles of 16-inch pipeline loop in Orange County, New York, the two 1,350 horsepower compressor units at Eagle compressor station in Chester County, Pennsylvania, and the 1,160 horsepower unit at Easton compressor station in Northampton County, Pennsylvania. Applicant asserts that to eliminate the overall deficiency in the A-5, Port Jervis and 1804 Systems the capabilities of the 1804 System must be increased by 97,200 Mcf per day. Applicant alleges that the proposed construction and operation of 103.7 miles of 24-inch pipeline loop located in Bedford, Greene, Fayette, Somerset, Fulton, Franklin, Adams, and York Counties, Pennsylvania, and Washington County, Maryland, and the 1,160 horsepower compressor unit at the Ariemas compressor station would provide the required increase in the 1804 System. Applicant contends that the proposed construction and operation of the 375 horsepower unit at the Easton compressor station would eliminate the deficiency in Applicant's ability to deliver exchange volumes to Transco at the required 1982-1983 level with the existing Easton compressor station facilities. Furthermore, Applicant states that the proposed construction and operation of the two 375 horsepower units at the Renovo compressor station would overcome the deficiency in Applicant's ability to deliver exchange volumes to Transco at the required levels with the existing Renovo compressor station facilities beginning with the 1983 summer period.

Applicant also proposes to abandon one 880 horsepower and one 500 horsepower compressor units at Eagle compressor station in Chester County, Pennsylvania. It is asserted that the location of Eagle compressor station is a high load factor operation and requires a high degree of reliability. Applicant states that the facilities proposed to be abandoned have accumulated 190,000 operating hours and that there are certain pressure losses inherent in these units primarily related to discharge piping and pulsation losses in the

cylinders and piping which are impractical to remedy due to the age and vintage of the facility.

Furthermore, Applicant requests authorization to sell natural gas to certain of its customers under the following revised service agreements:

#### Non-Eastern Market Area Customers

(1) A revised service agreement with Columbia Gas of Ohio, Inc. effectuating a decrease in its contract demand under Rate Schedule CDS of 11,500 Mcf per day from 1,417,500 Mcf per day to 1,406,000 Mcf per day in Zone 4 and an offsetting increase in contract demand of 11,700 dekatherms (dt) equivalent per day from 89,500 dt equivalent per day to 101,200 dt equivalent per day in Zone 6.

(2) A revised service agreement with Columbia Gas of West Virginia, Inc. effectuating a decrease in its contract demand under Rate Schedule CDS of 18,000 Mcf per day from 167,300 Mcf per day to 149,300 Mcf per day in Zone 1 and an offsetting increase in contract demand of 18,300 dt equivalent per day from 138,000 dt equivalent per day to 156,300 dt equivalent per day in Zone 6.

(3) A revised service agreement with Waterville Gas and Oil Company effectuating an increase in its maximum daily obligation under Rate Schedule SGS of 500 Mcf per day from 4,500 Mcf per day to 5,000 Mcf per day in Zone 4.

#### Eastern Market Area Customers

(1) A revised service agreement with Baltimore Gas and Electric Company effectuating an increase in its contract demand under Rate Schedule CDS of 40,000 dt equivalent per day from 360,000 dt equivalent per day to 400,000 dt equivalent per day and a reduction in its winter contract quantity, under Rate Schedule WS, of 2,530,000 dt equivalent from 8,280,000 dt equivalent to 5,750,000 dt equivalent in Zone 2.

(2) A revised service agreement with Bluefield Gas Company (Bluefield) effectuating an increase in its total daily entitlement under Rate Schedules CDS and WS of 700 Mcf per day from 9,700 Mcf per day to 10,400 Mcf per day in Zone 1. The proposed CDS increase is 400 Mcf per day from 5,600 Mcf per day to 6,000 Mcf per day. The proposed increase in maximum daily quantity under Rate Schedule WS is 300 Mcf per day from 4,100 Mcf per day to 4,400 Mcf per day. In addition, Bluefield has requested an increase in its winter contract quantity under Rate Schedule WS of 18,000 Mcf from 246,000 Mcf to 264,000 Mcf.

(3) A revised service agreement with Central Hudson Gas and Electric Corporation effectuating an increase in its contract demand under Rate

Schedule CDS of 3,000 dt equivalent per day from 16,100 dt equivalent per day to 19,100 dt equivalent per day in Zone 7.

(4) A revised service agreement with Commonwealth Gas Pipeline Corporation effectuating an increase in its contract demand under Rate Schedule CDS of 29,504 dt equivalent per day from 213,496 dt equivalent per day to 243,000 dt equivalent per day in Zone 2.

(5) A revised service agreement with Lynchburg Gas Company effectuating an increase in its contract demand under Rate Schedule CDS of 1,800 dt equivalent per day from 12,200 dt equivalent per day to 14,000 dt equivalent per day in Zone 2.

(6) A revised service agreement with Orange and Rockland Utilities, Inc. effectuating an increase in its contract demand under Rate Schedule CDS of 13,000 dt equivalent per day from 42,100 dt equivalent per day to 55,100 dt equivalent per day in Zone 7.

(7) A revised service agreement with Penn Fuel Gas, Inc. effectuating an increase in its contract demand under Rate Schedule CDS of 6,500 dt equivalent per day from 20,700 dt equivalent per day to 27,200 dt equivalent per day in Zone 6.

(8) A revised service agreement with Pennsylvania Gas and Water Company effectuating an increase in its contract demand under Rate Schedule CDS of 28,300 dt equivalent per day from 39,700 dt equivalent per day to 66,000 dt equivalent per day in Zone 6.

(9) A revised service agreement with UGI Corporation (UGI) effectuating an increase in its total daily entitlement under Rate Schedules CDS and WS of 30,000 dt equivalent per day from 300,000 dt equivalent per day to 330,000 dt equivalent per day. The proposed CDS increase is 15,000 dt equivalent per day from 250,000 dt equivalent per day to 265,000 dt equivalent per day. The proposed increase for maximum daily quantity under Rate Schedule WS is 15,000 dt equivalent per day from 50,000 dt equivalent per day to 65,000 dt equivalent per day. In addition, UGI has requested an increase in its winter contract quantity under Rate Schedule WS of 750,000 dt equivalent from 2,500,000 dt equivalent to 3,250,000 dt equivalent in Zone 6.

(10) A revised service agreement with Washington Gas Light Company effectuating an increase in its contract demand under Rate Schedule CDS of 42,500 dt equivalent per day from 408,900 dt equivalent per day to 451,400 dt equivalent per day in Zone 2.

It is asserted that the total net increase in total daily entitlement



requested by Applicant's non-Eastern Market Area customers is approximately 500 Mcf per day and that Applicant is able to serve these requirements from its existing supply and with its existing facilities. It is also stated that the revised service agreements between Applicant and its Eastern Market Area customers are conditioned upon completion of the construction proposed herein and the availability of Applicant's Cove Point supply from its affiliate, Columbia LNG Corporation.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 28, 1981, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.70). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and permission and approval for the proposed abandonment are required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 81-23722 Filed 8-13-81; 8:45 am]  
BILLING CODE 6450-85-M

[Docket No. TA81-2-21 (PGA81-2, IPR81-2 and AP81-2)]

**Columbia Gas Transmission Corp.;  
Proposed Changes in FERC Gas Tariff**

August 7, 1981.

Take notice that Columbia Gas Transmission Corporation (Columbia) on July 31, 1981, tendered for filing proposed changes in its FERC Gas Tariff Original Volume No. 1, as follows:

Seventy-Third Revised Sheet No. 16  
Twenty-First Revised Sheet No. 16A  
Eighteenth Revised Sheet No. 64  
Fifth Revised Sheet Nos. 64E through 64I

These proposed changes to be effective September 1, 1981, reflect the following:

(1) A PGA rate adjustment, pursuant to Section 20.3 of the General Terms and Conditions of Columbia's FERC Gas Tariff, Original Volume No. 1, to recover an increase in the cost of gas purchased of \$381,902,330 based on the six months ending February 28, 1982.

(2) A Commodity Surcharge, pursuant to Section 20.6 of the General Terms and Conditions of Columbia's FERC Gas Tariff, Original Volume No. 1, to recover the deferred purchased gas cost balance of \$124,890,831 at June 30, 1981, over the six month period September 1, 1981 through February 28, 1982.

(3) An Advance Payment Adjustment, pursuant to Article IX of the Stipulation and Agreement in Docket No. RP76-94, *et al.*, approved by Commission Letter Order issued March 16, 1978. Such Advance Payment Adjustment provides for an annual reduction of \$1,135,520.

(4) The elimination of the credit Transportation Surcharge Adjustment which became effective March 1, 1981 and terminates August 31, 1981, pursuant to Articles XI and XVIII of the Stipulation and Agreement in Docket No. RP78-19, *et al.*, approved by Commission Letter Order issued July 3, 1979.

Copies of the filing were served upon the Company's jurisdictional customers and interested state commission.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street, N.W., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.10). All such petitions or protests should be filed on or before August 19, 1981. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party

must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 81-23672 Filed 8-13-81; 8:45 am]  
BILLING CODE 6450-85-M

[Docket No. TA81-2-21-001 (LFUT81-2)]

**Columbia Gas Transmission Corp.;  
Proposed Changes in FERC Gas Tariff**

August 7, 1981.

Take notice that Columbia Gas Transmission Corporation (Columbia) on July 15, 1981, tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1, to become effective May 1, 1981.

Seventy-Second Revised Sheet No. 16  
Twenty-Second Revised Sheet No. 16A

Columbia states that the foregoing tariff sheets are being filed to reflect the elimination of the current Louisiana First Use Tax Rate Adjustment pursuant to Commission Order issued June 29, 1981, and the current Surcharge for Deferred LFUT Costs from its currently effective sales rates.

Copies of the filing were served upon the Company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.10). All such petitions or protests should be filed on or before August 14, 1981. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 81-23704 Filed 8-13-81; 8:45 am]  
BILLING CODE 6450-85-M

[Docket No. ER81-644-000]

**Commonwealth Electric Co.; Filing**

August 7, 1981.

The filing Company submits the following:



Take notice that on July 30, 1981, Commonwealth Electric Company (Commonwealth) filed a rate schedule governing the sale by Commonwealth of a portion of its entitlement to capacity and related energy produced by Canal Electric Company's Unit No. 2 (the Unit). Said filing was made pursuant to Section 35.12 of the regulations under the Federal Power Act as adopted by the Federal Energy Regulatory Commission pursuant to the Savings Provisions of Section 705(a) of the Department of Energy Organization Act.

By the provisions of the tendered rate schedule, Commonwealth proposes to sell to the North Attleborough Electric Department (NAED) 0.514 percent of the Net Capability of the Unit (as defined in Article III of the tendered rate schedule) plus the energy related thereto for a twelve month period beginning November 1, 1981.

A copy of the filing has been served upon North Attleborough Electric Department.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10)). All such petitions or protests should be filed on or before August 28, 1981. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 81-23706 Filed 8-13-81; 8:43 am]  
BILLING CODE 6450-95-M

[Docket No. ER80-717]

#### Connecticut Yankee Atomic Power Co.; Compliance Filing

August 7, 1981.

Take notice that Connecticut Yankee Atomic Power Company (Connecticut Yankee) submitted a compliance filing on July 27, 1981, pursuant to a Commission order approving a partial settlement which was issued June 12, 1981. This report advises the Commission that Connecticut Yankee has made refunds to its customers for the difference between the Company's

originally filed rates and the compliance rates. As enclosures Connecticut Yankee submitted (1) Monthly billing determinants and revenues at proposed rates for the period April 1, 1981 through May 31, 1981; and (2) computation of the monthly refunds, including interest, for the monthly billings for the period April 1, 1981, through May 31, 1981.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.10). All such petitions or protests should be filed on or before August 19, 1981. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 81-23707 Filed 8-13-81; 8:45 am]  
BILLING CODE 6450-95-M

[Docket No. TA81-2-22-001 (PGA81-2, IPR81-2, RD&D81-2, TT81-2, AP81-2)]

#### Consolidated Gas Supply Corp.; Proposed Changes in FERC Gas Tariff

August 7, 1981.

Take notice that Consolidated Gas Supply Corporation (Consolidated) on July 31, 1981, filed revised tariff sheets, pursuant to Sections 12 (PGA Clause), 12A (Incremental Pricing Surcharge), and 13 (Research, Development and Demonstration Cost Adjustment) of the General Terms and Conditions of its tariff, and the transportation cost and advance payment tracking provisions of the "Stipulation and Agreement Resolving Cost of Service and PGA Issues" approved by the Commission by letter order issued April 3, 1981, in Docket No. RP80-81. The revisions, shown on Twenty-Seventh Revised Sheet No. 16 and Fifth Revised Sheet No. 72-C, provide for Consolidated's semi-annual PGA to be effective September 1, 1981.

Consolidated has included in its filing:

- (a) Rate increases from pipeline suppliers in the amount of \$102.8 million;
- (b) Rate increases from producer suppliers in the amount of \$45.6 million;
- (c) A rate change to reflect a surcharge of 2.36 cents per dekatherm to recoup amounts accumulated in Account 191, Unrecovered Purchased Gas Costs;

(d) A rate change to reflect changes in transportation costs since June 30, 1980, of 2.11 cents per dekatherm pursuant to Article X of the referenced settlement; and,

(e) A rate decrease of 0.26 cents per dekatherm to track changes in advance payment balances pursuant to Article XI of the referenced settlement.

Consolidated states that the rates contained on Twenty-Seventh Revised Sheet No. 16 reflect old pipeline production (production from wells drilled prior to January 1, 1973, on leases acquired prior to October 8, 1969) on a cost-of-service basis and new pipeline production priced pursuant to the Natural Gas Policy Act of 1978. Consolidated states that rather than reflect old pipeline production at NGPA rates and face the risk that the filing would be rejected, it has followed current Commission regulations (18 CFR § 154.42). Consolidated reserves the right to make rate adjustments as may be required to conform to court decisions on the pipeline production issue.

Copies of this filing were served upon Consolidated's jurisdictional customers as well as interested State Commissions.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before August 19, 1981. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 81-23873 Filed 8-13-81; 8:45 am]  
BILLING CODE 6450-95-M

[Docket Nos. RP72-157-047, et al.]

#### Consolidated Gas Supply Corp., et al.; Filing of Pipeline Refund Reports and Refund Plans

August 10, 1981.

Take notice that the pipelines listed in the Appendix hereto have submitted to the Commission for filing proposed refund reports or refund plans. The date



of filing, docket number, and type of filing are also shown on the Appendix.

Any person wishing to do so may submit comments in writing concerning the subject refund reports and plans. All such comments should be filed with or mailed to the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before August 19, 1981. Copies of the respective filings are on file with the Commission and available for public inspection.

Kenneth F. Plumb,  
Secretary.

#### Appendix

| Filing date    | Company                         | Docket No.       | Type filing |
|----------------|---------------------------------|------------------|-------------|
| July 17, 1981. | Consolidated Gas Supply Corp.   | RP72-157-047     | Report.     |
| July 21, 1981. | Valley Gas Transmission, Inc.   | RP80-98-004      | Do.         |
| July 23, 1981. | Valley Gas Transmission, Inc.   | RP80-98-005      | Do.         |
| July 23, 1981. | Midwestern Gas Transmission Co. | RP78-23-008      | Do.         |
| July 24, 1981. | East Tennessee Natural Gas Co.  | RP73-107, et al. | Do.         |
| July 27, 1981. | National Fuel Gas Supply Corp.  | RP80-135-010     | Do.         |

(FR Doc. 81-23772 Filed 8-13-81; 8:45 am)

BILLING CODE 8450-85-M



## Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

Issued: August 6, 1981.

| JD NO                                   | JA DMT    | API NO     | E SEC CAT WELL NAME             | FIELD NAME               | PROD                   | FOUR-LEADER |
|-----------------------------------------|-----------|------------|---------------------------------|--------------------------|------------------------|-------------|
| ILLINOIS DEPARTMENT OF MINES & MINERALS |           |            |                                 |                          |                        |             |
| -SUN OIL COMPANY (DELAWARE)             |           |            |                                 |                          |                        |             |
| 8142153                                 |           | 1219328908 | 103 E R GREATHOUSE A NO 10      | NEW HARMONY CONSOLIDATED | 20.0 TEXAS EASTERN TRA |             |
| 8142152                                 |           | 1219328749 | 103 E R GREATHOUSE A NO 5       | NEW HARMONY CONSOLIDATED | 10.0 TEXAS EASTERN TRA |             |
| MONTANA BOARD OF OIL & GAS CONSERVATION |           |            |                                 |                          |                        |             |
| -FALCON-COLORADO EXPLORATION INC        |           |            |                                 |                          |                        |             |
| 8142149                                 | 8-80-191  | 2510521138 | 108 #1 GREEN                    | SWANSON CREEK GAS FIELD  | 18.0 MONTANA-DAKOTA UT |             |
| 8142151                                 | 11-80-235 | 2507121662 | 108 1-36 STATE                  | SWANSON CREEK            | 20.9 MONTANA-DAKOTA UT |             |
| 8142146                                 | 8-80-188  | 2510521168 | 108 1-4 FISHER                  | SWANSON CREEK GAS FIELD  | 12.0 MONTANA-DAKOTA UT |             |
| 8142144                                 | 8-80-186  | 2507121619 | 108 1-5 BOWMAN                  | SWANSON CREEK GAS FIELD  | 12.0 MONTANA-DAKOTA UT |             |
| 8142147                                 | 8-80-189  | 2510521150 | 108 1-9 FISHER                  | SWANSON CREEK GAS FIELD  | 8.0 MONTANA-DAKOTA UT  |             |
| 8142148                                 | 8-80-190  | 2507121620 | 108 2-20 FISHER                 | SWANSON CREEK GAS FIELD  | 10.0 MONTANA-DAKOTA UT |             |
| 8142150                                 | 8-80-192  | 2507121663 | 108 2-36 STATE                  | SWANSON CREEK GAS FIELD  | 15.0 MONTANA-DAKOTA UT |             |
| 8142145                                 | 8-80-187  | 2507121676 | 108 2-5 BOWMAN                  | SWANSON CREEK GAS FIELD  | 19.0 MONTANA-DAKOTA UT |             |
| OHIO DEPARTMENT OF NATURAL RESOURCES    |           |            |                                 |                          |                        |             |
| -ADOBE OIL & GAS CORPORATION            |           |            |                                 |                          |                        |             |
| 8142155                                 |           | 3413321829 | 103 C W MOSS #1                 | BRIMFIELD                | 22.0 EAST OHIO GAS CO  |             |
| 8142156                                 |           | 3415703290 | 103 CLARENCE MADRON #1          | DOVER                    | 23.0 EAST OHIO GAS CO  |             |
| 8142158                                 |           | 3415703554 | 103 J O SMITH #1                | FAIRFIELD                | 24.0 EAST OHIO GAS CO  |             |
| 8142154                                 |           | 3413321783 | 103 M L GRUND #1                | BRIMFIELD                | 22.0 EAST OHIO GAS CO  |             |
| 8142157                                 |           | 3415703291 | 103 ROBERT J MORRIS #1          | DOVER                    | 24.0 EAST OHIO GAS CO  |             |
| -AMERICAN WELL MANAGEMENT COMPANY       |           |            |                                 |                          |                        |             |
| 8142159                                 |           | 3407522923 | 103 JAMES KING NO 1             | KILLBUCK                 | 16.0                   |             |
| 8142160                                 |           | 3408923963 | 103 OLA PALMER NO 2             | BOWLING GREEN            | 16.0                   |             |
| 8142161                                 |           | 3412722903 | 103 PARKER WOODS NO 4           | HOPWELL                  | 18.0                   |             |
| -BANDS COMPANY INC                      |           |            |                                 |                          |                        |             |
| 8142162                                 |           | 3411925716 | 103 V J EBB #3                  | JACKSON                  | C U NATIONAL GAS & CO  |             |
| -BELDEN & BLAKE AND CO #77              |           |            |                                 |                          |                        |             |
| 8142163                                 |           | 3401921354 | 103 C & B RAUSCHENBACH #2-34974 | RCSE                     | 36.5                   |             |
| 8142164                                 |           | 3415123520 | 103 E RINGER #3-341094          | MARLBORO                 | 36.5 EAST OHIO GAS CO  |             |
| 8142165                                 |           | 3415123527 | 103 MARVIN FRANK #1-341080      | MARLBORO                 | 36.5 EAST OHIO GAS CO  |             |
| -BELL OIL                               |           |            |                                 |                          |                        |             |
| 8142166                                 |           | 3412725110 | 103 KENNETH SHRINER #1          | JUNCTION CITY QUAD       | 5.0 NATIONAL GAS CO    |             |
| -BEREA OIL AND GAS CORPORATION          |           |            |                                 |                          |                        |             |
| 8142168                                 |           | 3415520731 | 108 D & M BUTLER #1             | VIENNA                   | 9.0 EAST OHIO GAS CO   |             |
| 8142169                                 |           | 3415521024 | 108 JAMES-JAMES-KOCHES UNIT #1  | VIENNA                   | 10.0 EAST OHIO GAS CO  |             |
| 8142167                                 |           | 3415520623 | 108 PRICE UNIT #1               | VIENNA                   | 4.3 EAST OHIO GAS CO   |             |
| 8142170                                 |           | 3415521025 | 108 T E & G JAMES #1            | VIENNA                   | 5.7 EAST OHIO GAS CO   |             |



| JD NO                           | JA DKT  | API NO     | C SEC CAT WELL NAME                | RECEIVED: 07/20/81 | JA: CH     | FIELD NAME | PKCL              | FULFILLER |
|---------------------------------|---------|------------|------------------------------------|--------------------|------------|------------|-------------------|-----------|
| -BERRESFORD ENTERPRISES INC     | 8142171 | 3403124019 | 103 LAWRENCE PAYNE #1              | 103                | TIVERTON   | 0.0        |                   |           |
| -BETHEL RESOURCES INC           | 8142172 | 3416725983 | 103 ULLMAN #1                      | 103                | WATERFORD  | 0.0        |                   |           |
| -BRENDAL PRODUCING CO           | 8142173 | 3416902685 | 103 BRICKER #3                     | 103                | FRANKLIN   | 12.0       | COLUMBIA GAS TRAN |           |
| -BUCKEYE CRUDE EXPLORATION INC  | 8142174 | 3415720046 | 108 COLUMBIA FIRE BRICK #1         | 108                |            | 6.8        | EAST OHIO GAS CO  |           |
| -CHANCE PETROLEUM CORPORATION   | 8142175 | 3415720054 | 108 COLUMBIA FIRE BRICK #2         | 108                |            | 2.3        | EAST OHIO GAS CO  |           |
| -CLINTON OIL CO                 | 8142176 | 3415720059 | 108 COLUMBIA FIRE BRICK #3         | 108                |            | 1.2        | EAST OHIO GAS CO  |           |
| -DAVID SHAVER OIL PRODUCERS INC | 8142177 | 3415720111 | 108 COLUMBIA FIRE BRICK #5         | 108                |            | 3.5        | EAST OHIO GAS CO  |           |
| -DENHOLM-KNOX NO 1 LTD          | 8142178 | 3415720131 | 108 DESSECKER #1                   | 108                |            | 2.6        | EAST OHIO GAS CO  |           |
| -DINE ENERGY CO                 | 8142179 | 3415720020 | 108 DESSECKER #2                   | 108                |            | 3.7        | EAST OHIO GAS CO  |           |
| -DORAN & ASSOCIATES INC         | 8142180 | 3415720144 | 108 MARKLEY #1                     | 108                |            | 6.8        | EAST OHIO GAS CO  |           |
| -EDCO DRILLING & PRODUCING INC  | 8142181 | 3400922159 | 103 JOHNSON #10                    | 103                | AMES       | 1.0        | COLUMBIA GAS TRAN |           |
| -ELKHEAD GAS & OIL COMPANY      | 8142182 | 3400922160 | 103 JOHNSON #11                    | 103                | AMES       | 1.0        | COLUMBIA GAS TRAN |           |
| -GIANT PETROLEUM CORPORATION    | 8142183 | 3400721524 | 103 STANLEY & VERMICA SCHOSSLER #1 | 103                | JEFFERSON  | 4.0        |                   |           |
| -HARTIN & HUFFMAN               | 8142184 | 3408924077 | 103 A LIPPERT #2-635               | 103                |            | 100.0      |                   |           |
| -J D DRILLING CO                | 8142185 | 3403124404 | 103 M W C D #3-543                 | 103                | HOPWELL    | 50.0       |                   |           |
| -JOHN TANSKY                    | 8142186 | 3415320944 | 103 RAYMOND C FIRESTONE #1-A       | 103                | TIVERTON   |            |                   |           |
| -K S T OIL & GAS CO INC         | 8142187 | 3411521765 | 108 FORREST KNOX #1                | 108                | BATH       | 15.0       | EAST OHIO GAS CO  |           |
| -K S T OIL & GAS CO INC         | 8142188 | 3405300500 | 103 QUICKEL #1                     | 103                |            | 2.6        | COLUMBIA GAS TRAN |           |
| -K S T OIL & GAS CO INC         | 8142189 | 3412724956 | 103 GUICKEL #1                     | 103                | BEREA      | 0.0        |                   |           |
| -K S T OIL & GAS CO INC         | 8142190 | 3412724956 | 103 PAMELA SIDWELL #1              | 103                | JACKSON    | 12.0       | COLUMBIA GAS TRAN |           |
| -K S T OIL & GAS CO INC         | 8142191 | 3407522922 | 103 PAMELA SIDWELL #1              | 103                | JACKSON    | 12.0       | COLUMBIA GAS TRAN |           |
| -K S T OIL & GAS CO INC         | 8142192 | 3408322871 | 103 K8-18 GRASSBAUGH               | 103                | RICHLAND   | 18.0       |                   |           |
| -K S T OIL & GAS CO INC         | 8142193 | 3400701546 | 103 RUSENBURG #4                   | 103                | KNOX       | 50.0       | COLUMBIA GAS TRAN |           |
| -K S T OIL & GAS CO INC         | 8142194 | 3400701547 | 103 HAMMOND #12                    | 103                | KNOX       | 46.0       | COLUMBIA GAS TRAN |           |
| -K S T OIL & GAS CO INC         | 8142195 | 3400701658 | 103 GEORGE ULRICH #2               | 103                | ORWELL     | 20.0       | EAST OHIO GAS CO  |           |
| -K S T OIL & GAS CO INC         | 8142196 | 3400701658 | 103 GEORGE ULRICH #3               | 103                | ORWELL     | 20.0       | EAST OHIO GAS CO  |           |
| -K S T OIL & GAS CO INC         | 8142197 | 3412122597 | 103 ZEVCHIK #1                     | 103                | COLEBROOK  | 20.0       | EAST OHIO GAS CO  |           |
| -K S T OIL & GAS CO INC         | 8142198 | 3403520980 | 103 C G IRWIN #1                   | 103                | BROOKFIELD | 0.0        | EAST OHIO GAS CO  |           |
| -K S T OIL & GAS CO INC         | 8142199 | 3403520980 | 103 MOORE ROAD INVESTMENT INC #1   | 103                | OLMSTEAD   | 10.0       | COLUMBIA GAS OF O |           |
| -K S T OIL & GAS CO INC         | 8142200 | 3403520952 | 103 P D K CO - SHILO UNIT #1       | 103                | OLMSTEAD   | 0.0        | COLUMBIA GAS OF O |           |
| -K S T OIL & GAS CO INC         | 8142201 | 3407521767 | 103 POK-CHK UNIT #1                | 103                | OLMSTEAD   | 10.0       | COLUMBIA GAS OF O |           |
| -K S T OIL & GAS CO INC         | 8142202 | 3407521767 | 103 MARTUCH #1                     | 103                | RICHLAND   | 50.0       |                   |           |
| -K S T OIL & GAS CO INC         | 8142203 | 3408322797 | 103 #1 CHARLES LASER               | 103                | JEFFERSON  | 1.2        | COLUMBIA GAS TRAN |           |
| -K S T OIL & GAS CO INC         | 8142204 | 3410521950 | 103 HANLEY DUNN #1                 | 103                | SALISBURY  | 3.0        | COLUMBIA GAS TRAN |           |
| -K S T OIL & GAS CO INC         | 8142205 | 3412725099 | 103 MARGARET CANNON #1             | 103                | CLAYTON    | 8.0        |                   |           |
| -K S T OIL & GAS CO INC         | 8142206 | 3412725099 | 103 RECEIVED: 07/20/81             | 103                |            |            |                   |           |



| JD NO                           | JA DMY | API NO     | D SEC CAT | WELL NAME                       | FIELD NAME    | PRICE  | PURCHASER         |
|---------------------------------|--------|------------|-----------|---------------------------------|---------------|--------|-------------------|
| 8142209                         |        | 3415521271 | 103       | GRAND VALLEY #3                 | BLOOMFIELD    | 120.0  |                   |
| 8142208                         |        | 3415521330 | 103       | GRAND VALLEY #4                 | BRISTOLVILLE  | 116.0  |                   |
| 8142204                         |        | 3415328850 | 103       | MULDOWNEY #1                    | NORTHAMPTON   | 160.0  |                   |
| 8142205                         |        | 3415328851 | 103       | MULDOWNEY #2                    | NORTHAMPTON   | 160.0  |                   |
| 8142206                         |        | 3415328853 | 103       | NORTHAMPTON INVESTMENT GROUP #1 | NORTHAMPTON   | 180.0  |                   |
| 8142207                         |        | 3415328966 | 103       | STAHL #1                        | NORTHAMPTON   | 140.0  |                   |
| -LANDPROVEST INC                |        |            |           | RECEIVED: 07/20/81              | JAE: CH       |        |                   |
| 8142210                         |        | 3411905688 | 103       | EVERETT & FLORENCE LEECH #5     | PERRY         | 25.0   |                   |
| 8142211                         |        | 3411905707 | 103       | MENDELL DERRY #2                | PERRY         | 25.0   |                   |
| -MARJAC ENERGY CO               |        |            |           | RECEIVED: 07/20/81              | JAE: CH       |        |                   |
| 8142212                         |        | 3404520678 | 103       | FREELAND 2                      | RUSHCREEK     | 12.0   |                   |
| -NATIONAL PETROLEUM CORP        |        |            |           | RECEIVED: 07/20/81              | JAE: CH       |        |                   |
| 8142217                         |        | 3411122351 | 103       | R STIMPERT #1                   | SUMMIT        | 15.0   | TEXAS EASTERN TR  |
| -OHIO PARTNERS OIL CO           |        |            |           | RECEIVED: 07/20/81              | JAE: CH       |        |                   |
| 8142218                         |        | 3407582379 | 103       | RAMSEY #1                       | KILLBUCK      | 20.0   | COLUMBIA GAS TRAN |
| -OXFORD OIL CO                  |        |            |           | RECEIVED: 07/20/81              | JAE: CH       |        |                   |
| 8142219                         |        | 3403324324 | 103       | EDNA MASTON #1                  | NEW CASTLE    | 11.0   |                   |
| -RELIANCE ENERGY                |        |            |           | RECEIVED: 07/20/81              | JAE: CH       |        |                   |
| 8142222                         |        | 3408322878 | 103       | HAYWARD & JACQUELYN DICK #1     | HARRISON      | 6.0    | COLUMBIA GAS TRAN |
| 8142220                         |        | 3404520681 | 103       | LARRY BAUGHMAN #1               | RICHLAND      | 16.0   | COLUMBIA GAS TRAN |
| 8142221                         |        | 3404520683 | 103       | M & L WINEGARDNER #1            | RICHLAND      | 10.0   | COLUMBIA GAS TRAN |
| -RESOURCE RECOVERY ENTERPRISES  |        |            |           | RECEIVED: 07/20/81              | JAE: CH       |        |                   |
| 8142223                         |        | 3411122065 | 103       | PAUL & BERNICE MARSHALL #1      | BETHEL        | 66.0   |                   |
| -SANDHILL ENERGY INC (OH)       |        |            |           | RECEIVED: 07/20/81              | JAE: CH       |        |                   |
| 8142225                         |        | 3416726373 | 103       | EDWARD RINARD #1                | LUDLOW        | 24.0   |                   |
| 8142224                         |        | 3416726265 | 103       | NORMAN RIDGEWAY #1              | GRANDVIEW     | 10.5   |                   |
| -TEMPLE OIL & GAS CO            |        |            |           | RECEIVED: 07/20/81              | JAE: CH       |        |                   |
| 8142229                         |        | 3411521986 | 103       | TEMPLE EPPLEY FEE #1            | YORK          | 10.0   |                   |
| -THE MUTUAL OIL & GAS COMPANY   |        |            |           | RECEIVED: 07/20/81              | JAE: CH       |        |                   |
| 8142213                         |        | 3411122179 | 103       | R MALLETT #1-M                  | FRANKLIN      | 25.0   | COLUMBIA GAS TRAN |
| 8142215                         |        | 3413322451 | 103       | PAUL #1                         | NELSON        | 15.0   | COLUMBIA GAS TRAN |
| 8142214                         |        | 3411122155 | 103       | R HINES 2-M                     | FRANKLIN      | 15.0   | COLUMBIA GAS TRAN |
| 8142216                         |        | 3413322452 | 103       | TOMKO #1                        | NELSON        | 10.0   |                   |
| -W E SHRIDER CO                 |        |            |           | RECEIVED: 07/20/81              | JAE: CH       |        |                   |
| 8142227                         |        | 3403124061 | 103       | ADRIAN DARR #1                  | WASHINGTON    | 3.0    | COLUMBIA GAS TRAN |
| -WILLIAM F HILL                 |        |            |           | RECEIVED: 07/20/81              | JAE: CH       |        |                   |
| 8142261                         |        | 3407522816 | 103       | JOSEPH & McDOWELL 1-A           | RICHLAND      | 7.0    |                   |
| -WILLIAM V CANTLIN              |        |            |           | RECEIVED: 07/20/81              | JAE: CH       |        |                   |
| 8142183                         |        | 3408924058 | 103       | DARNES #1                       | MADISON       | 10.0   |                   |
| OKLAHOMA CORPORATION COMMISSION |        |            |           |                                 |               |        |                   |
| -ARADRA HESS CORPORATION        |        |            |           | RECEIVED: 07/17/81              | JAE: CH       |        |                   |
| 8142248                         |        | 3504321028 | 103       | HARWELL UNIT #2                 | PUTNAM-MORROW | 245.6  | MICHIGAN WISCONSI |
| -AN-SON CORPORATION             |        |            |           | RECEIVED: 07/17/81              | JAE: CH       |        |                   |
| 8142254                         |        | 3514928139 | 107-DP    | OGLE #1-15                      | E EURAS FLAT  | 1394.0 |                   |
| -ANADARKO PRODUCTION COMPANY    |        |            |           | RECEIVED: 07/20/81              | JAE: CH       |        |                   |
| 8142278                         |        | 3500721910 | 102-4     | FRANZ B NO 1                    | FLORIS        | 91.0   | PANHANDLE EASTERN |
| 8142269                         |        | 3500721701 | 102-4     | JUDY A NO 1                     | MCCABE        | 110.0  | PANHANDLE EASTERN |
| -ANDOVER OIL COMPANY            |        |            |           | RECEIVED: 07/17/81              | JAE: CH       |        |                   |
| 8142241                         |        | 3501721785 | 102-2     | SCHWAB #15-4                    |               | 100.0  | DELHI GAS PIPELIN |
| 8142241                         |        | 3501721785 | 103       | SCHWAB #15-4                    |               | 101.0  | DELHI GAS PIPELIN |
| -ANDOVER OIL COMPANY            |        |            |           | RECEIVED: 07/20/81              | JAE: CH       |        |                   |



PAGE 614

VOLUME 460

| JO NO                         | JA DKT | API NO     | D SEC CAT | WELL NAME                       | FIELD NAME | PRG | PURCHASER               |
|-------------------------------|--------|------------|-----------|---------------------------------|------------|-----|-------------------------|
| 8142258                       | 10671  | 3501721799 | 102-2     | E MILLS #28-2                   |            |     | 125.0 DELHI GAS PIPELIN |
| 8142286                       | 10707  | 3501721873 | 102-2     | WOLF #29-1                      |            |     | 125.0 DELHI GAS PIPELIN |
| 8142286                       | 10707  | 3501721873 | 103       | WOLF #29-1                      |            |     | 125.0 DELHI GAS PIPELIN |
| -ARCO OIL AND GAS COMPANY     |        |            |           | RECEIVED: 07/20/81              | JA: OK     |     |                         |
| 8142290                       | 10694  | 3504722215 | 102-4     | EDNA LANG NO 1                  |            |     | 11.0                    |
| 8142291                       | 10695  | 3504722250 | 102-4     | RALPH MAXEY NO 1                |            |     | 11.0                    |
| 8142271                       | 09847  | 3500721763 | 103       | ULLRICH-PARKER UNIT WELL #3     |            |     | 36.5 NORTHERN NATURAL   |
| -BERRY PETROLEUM CORP         |        |            |           | RECEIVED: 07/20/81              | JA: OK     |     |                         |
| 8142275                       | 10512  | 3509322081 | 102-4     | RATZLAFF #1-29                  |            |     | 300.0 PIONEER GAS PRCDU |
| -BOGERT OIL CO                |        |            |           | RECEIVED: 07/17/81              | JA: OK     |     |                         |
| 8142242                       | 09695  | 3504722357 | 103       | ANY #1-4                        |            |     | 246.0 ARKANSAS LOUISIAN |
| -C & N OIL & GAS CO           |        |            |           | RECEIVED: 07/20/81              | JA: OK     |     |                         |
| 8142266                       | 09811  | 3510500000 | 103       | BOB WILLIS #1                   |            |     | 2.5 CITIES SERVICE GA   |
| 8142267                       | 09810  | 3510500000 | 103       | HOLLENBECK #2                   |            |     | 3.0 CITIES SERVICE GA   |
| 8142294                       | 09775  | 3510500000 | 103       | HUTTON #3                       |            |     | 5.0 CITIES SERVICE GA   |
| -C & N OIL & GAS CO           |        |            |           | RECEIVED: 07/17/81              | JA: OK     |     |                         |
| 8142230                       | 09776  | 3510500000 | 103       | BOB WILLIS #2                   |            |     | 3.5 CITIES SERVICE GA   |
| 8142232                       | 09778  | 3510500000 | 103       | HOLLENBECK #1                   |            |     | 3.0 CITIES SERVICE GA   |
| 8142231                       | 09777  | 3510500000 | 103       | W WILLIS #1                     |            |     | 3.0 CITIES SERVICE GA   |
| -CHAMPLIN PETROLEUM COMPANY   |        |            |           | RECEIVED: 07/20/81              | JA: OK     |     |                         |
| 8142293                       | 09788  | 3500320695 | 103       | ELECTRA HOPE REINH NO 2         |            |     | 25.0 CHAMPLIN PETROLEU  |
| 8142262                       | 09609  | 3507322754 | 102-4     | ROY ROTHMIRE NO 2               |            |     | 76.7 PHILLIPS PETROLEU  |
| 8142262                       | 09609  | 3507322754 | 103       | ROY ROTHMIRE NO 2               |            |     | 76.7 PHILLIPS PETROLEU  |
| 8142274                       | 10632  | 3507322754 | 102-4     | YORK NO 1                       |            |     | 800.0 PHILLIPS PETROLEU |
| 8142274                       | 10632  | 3507322754 | 103       | YORK NO 1                       |            |     | 800.0 PHILLIPS PETROLEU |
| 8142283                       | 10712  | 3507323017 | 102-4     | YORK NO 3                       |            |     | 175.0 PHILLIPS PETROLEU |
| -COITON PETROLEUM CORPORATION |        |            |           | RECEIVED: 07/17/81              | JA: OK     |     |                         |
| 8142247                       | 09638  | 3501121502 | 103       | BERG A #1                       |            |     | 100.0 TRANSON PIPE LINE |
| -DAVIS OIL COMPANY            |        |            |           | RECEIVED: 07/20/81              | JA: OK     |     |                         |
| 8142292                       | 09795  | 3507322629 | 103       | BRUEGGEN #1                     |            |     | 100.0 PHILLIPS PETROLEU |
| -DON J LEEHAN                 |        |            |           | RECEIVED: 07/17/81              | JA: OK     |     |                         |
| 8142252                       | 08270  | 3509900000 | 103       | LEEMAN #1 BLYTHE                |            |     | 14.6 AMINOIL USA INC    |
| -EXXON CORPORATION            |        |            |           | RECEIVED: 07/20/81              | JA: OK     |     |                         |
| 8142264                       | 08277  | 3507322495 | 103       | G STRIBEL #2                    |            |     | 6.0 ONG WESTERN INC     |
| -GELTY OIL COMPANY            |        |            |           | RECEIVED: 07/17/81              | JA: OK     |     |                         |
| 8142235                       | 10619  | 3501721270 | 102-2     | LABAHN NO 13-1                  |            |     | 146.0 DELHI GAS PIPELIN |
| -GELTY OIL COMPANY            |        |            |           | RECEIVED: 07/20/81              | JA: OK     |     |                         |
| 8142281                       | 10316  | 3505120909 | 102-4     | LEACH #8-1                      |            |     | 100.0 TRANSOK PIPE LINE |
| 8142282                       | 10315  | 3505120871 | 102-4     | OSBORN #9-1                     |            |     | 200.0 TRANSON PIPE LINE |
| *8142299                      | 09817  | 3513722449 | 103       | TEMPLES UNIT WELL NO 2 (HUNTON) |            |     | 400.0 LONE STAR GAS CO  |
| -HARPER OIL COMPANY           |        |            |           | RECEIVED: 07/17/81              | JA: OK     |     |                         |
| 8142234                       | 10678  | 3503920417 | 102-2     | CHRYSTAL #1                     |            |     | 500.0 ONG WESTERN INC   |
| -HOLDEN ENERGY CORP           |        |            |           | RECEIVED: 07/17/81              | JA: OK     |     |                         |
| 8142238                       | 10688  | 3501922149 | 102-4     | KIRK #1                         |            |     | 20.0 AMINOIL USA INC    |
| 8142237                       | 10690  | 3501922164 | 102-4     | REED 12-2                       |            |     | 17.5 AMINOIL USA INC    |
| -JIMMY W GRAY                 |        |            |           | RECEIVED: 07/17/81              | JA: OK     |     |                         |
| 8142246                       | 09628  | 3504921371 | 103       | WALLY #1                        |            |     | 6.0 WARREN PETROLEUM    |
| -JOHN A TAYLOR                |        |            |           | RECEIVED: 07/20/81              | JA: OK     |     |                         |
| 8142285                       | 10720  | 3501520926 | 102-2     | KAMH #1                         |            |     | 6.0 EL PASO NATURAL G   |
| 8142287                       | 10719  | 3501521010 | 102-2     | RUCKMAN #1                      |            |     | 6.0 EL PASO NATURAL G   |
| -KAISER-FRANCIS OIL COMPANY   |        |            |           | RECEIVED: 07/17/81              | JA: OK     |     |                         |
| 8142239                       | 10571  | 3505121057 | 102-4     | BRANSCOMB #1                    |            |     | 260.0 DELHI GAS PIPELIN |
| 8142239                       | 10571  | 3505121057 | 103       | BRANSCOMB #1                    |            |     | 260.0 DELHI GAS PIPELIN |



PAGE 486

VOLUME 486

| JD NO                             | JA DKT | API NO     | D-SEC CAT WELL NAME           | FIELD NAME               | PROD | PURCHASER               |
|-----------------------------------|--------|------------|-------------------------------|--------------------------|------|-------------------------|
| -LOMA OIL CORP                    |        |            |                               | EAST BLACKWELL           |      | G.O. CORONADO TRANSMIS  |
| 8142249                           | 07994  | 3501721873 | RECEIVED: 07/17/81 JA: OK     | E BLACKWELL              |      | G.O. CORONADO TRANSMIS  |
| 8142250                           | 07996  | 3501700000 | 103 CLAYBARKER #2             | E BLACKWELL              |      | G.O. CORONADO TRANSMIS  |
| 8142251                           | 07998  | 3501700000 | 103 COURTNEY #2               |                          |      |                         |
| -MACK OIL CO                      |        |            |                               |                          |      |                         |
| 8142279                           | 09821  | 3502700000 | RECEIVED: 07/20/81 JA: OK     |                          |      | 50.0 SUN GAS COMPANY    |
| 8142273                           | 09826  | 3515300000 | 103 #1 ANDREWS                |                          |      | 250.0 WESTERN FARMERS E |
| 8142280                           | 09822  | 3502700000 | 103 BUSH #1                   |                          |      | 35.0 SUN GAS CO         |
| 8142296                           | 09825  | 3513700000 | 103 CALVERT #1                |                          |      | 100.0 ARKANSAS LOUISIAN |
| 8142297                           | 09823  | 3501900000 | 103 DUNCAN TOWNSITE #1        |                          |      | 75.0 AMINOIL USA INC    |
| 8142265                           | 09820  | 3501900000 | 103 FRAZIER #3                |                          |      | 25.0 AMINOIL USA INC    |
| 8142272                           | 09827  | 3507300000 | 103 REEG #1                   |                          |      | 175.0 PHILLIPS PETROLEU |
| -NATIONAL OIL COMPANY             |        |            |                               |                          |      |                         |
| 8142260                           | 08266  | 3502520402 | RECEIVED: 07/20/81 JA: OK     | MEYER                    |      | 250.4 COLORADO INTERSTA |
| -NELSON PETROLEUM COMPANY         |        |            |                               |                          |      |                         |
| 8142245                           | 09582  | 3512120762 | RECEIVED: 07/17/81 JA: OK     | RUSSELLVILLE             |      | 365.0 SOUTHEAST TRANSMI |
| -P-T LTD 80                       |        |            |                               |                          |      |                         |
| 8142253                           | 09162  | 3504772236 | RECEIVED: 07/17/81 JA: OK     | SOONER TREND             |      | 50.0 WELLHEAD ENTERPRI  |
| -P-T LTD 80                       |        |            |                               |                          |      |                         |
| 8142295                           | 09161  | 3509321961 | RECEIVED: 07/20/81 JA: OK     | SOONER TREND             |      | 50.0 WELLHEAD ENTERPRI  |
| -POST PETROLEUM COMPANY INC       |        |            |                               |                          |      |                         |
| 8142236                           | 10635  | 3501721596 | RECEIVED: 07/17/81 JA: OK     | N CONCHO                 |      | 0.0 PHILLIPS PETROLEU   |
| -READING & BATES PETROLEUM CO     |        |            |                               |                          |      |                         |
| 8142277                           | 09973  | 3503920342 | RECEIVED: 07/20/81 JA: OK     | BUTLER PROSPECT          |      | 365.0                   |
| -RESOURCES INVESTMENT CORPORATION |        |            |                               |                          |      |                         |
| 8142233                           | 09750  | 3502720422 | RECEIVED: 07/17/81 JA: OK     | N W NORMAN               |      | 45.3 SUN GAS CO         |
| -ROBERT C ANDERSON                |        |            |                               |                          |      |                         |
| 8142259                           | 08247  | 3508321255 | RECEIVED: 07/20/81 JA: OK     | W MARSHALL               |      | 36.0 EASON OIL CO       |
| -SAMSON RESOURCES COMPANY         |        |            |                               |                          |      |                         |
| 8142261                           | 09771  | 3507920380 | RECEIVED: 07/20/81 JA: OK     | KINTA                    |      | 5.5 ARKANSAS LOUISIAN   |
| 8142261                           | 09771  | 3507920380 | 102-4 LOYD UNIT NO 1-CROMWELL | KINTA                    |      | 5.5 ARKANSAS LOUISIAN   |
| 8142268                           | 09772  | 3507920380 | 103 LOYD UNIT NO 1-CROMWELL   | KINTA                    |      | 602.2 ARKANSAS LOUISIAN |
| 8142268                           | 09772  | 3507920380 | 102-4 LOYD UNIT NO 1-SPIRO    | KINTA                    |      | 602.2 ARKANSAS LOUISIAN |
| -SEARCH DRILLING CO               |        |            |                               |                          |      |                         |
| 8142298                           | 09818  | 3500721988 | RECEIVED: 07/20/81 JA: OK     | W ELMWOOD                |      | 0.1 PHILLIPS PETROLEU   |
| -SUN OIL COMPANY (DELAWARE)       |        |            |                               |                          |      |                         |
| 8142263                           | 09318  | 3501121488 | RECEIVED: 07/20/81 JA: OK     | E FAY                    |      | 1200.0 MICHIGAN WISCONS |
| -TEXACO INC                       |        |            |                               |                          |      |                         |
| 8142284                           | 10711  | 3508520433 | RECEIVED: 07/20/81 JA: OK     | SIMCA - NORTH            |      | 21.0 AMINOIL USA INC    |
| -TEXAS OIL & GAS CORP             |        |            |                               |                          |      |                         |
| 8142276                           | 09829  | 3509321953 | RECEIVED: 07/20/81 JA: OK     | E BACC                   |      | 177.0 DELHI GAS PIPELIA |
| -TRANS-WESTERN EXPLORATION INC    |        |            |                               |                          |      |                         |
| 8142257                           | 10622  | 3504321164 | RECEIVED: 07/20/81 JA: OK     | N OAKWOOD                |      | 145.0 PHILLIPS PETROLEU |
| 8142257                           | 10622  | 3504321164 | 102-4 DAVIS 3-9               | N OAKWOOD                |      | 145.0 PHILLIPS PETROLEU |
| 8142257                           | 10622  | 3504321164 | 103 DAVIS 3-9                 |                          |      |                         |
| -TRANSIERRA EXPLORATION CORP      |        |            |                               |                          |      |                         |
| 8142270                           | 09828  | 3510321135 | RECEIVED: 07/20/81 JA: OK     | TRANSIERRA-CINNAMON FIEL |      | 46.0 AMINOIL USA INC    |
| -TRIPLER DRILLING CO              |        |            |                               |                          |      |                         |
| 8142244                           | 10591  | 3501922072 | RECEIVED: 07/17/81 JA: OK     |                          |      | 180.0 AMINOIL USA INC   |
| 8142240                           | 10592  | 3501921811 | 102-4 OVERSTREET #2           |                          |      | 180.0 AMINOIL USA INC   |
| -UNIT OPERATIONS                  |        |            |                               |                          |      |                         |
| 8142268                           | 09109  | 3508321449 | RECEIVED: 07/20/81 JA: OK     | ACPT- GUTHRIE            |      | 45.0 EASON OIL CO       |
| -VIERS & COCHRAN                  |        |            |                               |                          |      |                         |
| 8142255                           | 09790  | 3504721393 | RECEIVED: 07/17/81 JA: OK     | SOONER TREND             |      | 200.0 UNION TEXAS PETRO |



| JD NO                              | JA DKT   | API NO     | D SEC CAT | WELL NAME                 | FILL NAME           | VOLUME | DATE              | BUYER |
|------------------------------------|----------|------------|-----------|---------------------------|---------------------|--------|-------------------|-------|
| 8142256                            | 09791    | 3501121525 | 103       | TRIAL #2-31               | WATONGA TREAD       | 150.0  | DELHI GAS PIPELIN |       |
| 8142289                            | 5388     | 3507720193 | 102-4     | MCCULLOUGH #1             | RED OAK-NORRIS      | 300.0  | ARKANSAS LOUISIAN |       |
| 8142243                            | 09742    | 3510120703 | 103       | COOK-WASSON #1-11         | COOK-WASSON         | 60.0   | PHILLIPS PETROLEU |       |
| UTAH DIVISION OF OIL, GAS & MINING |          |            |           |                           |                     |        |                   |       |
| RECEIVED: 07/20/81 JA: UT          |          |            |           |                           |                     |        |                   |       |
| 8142143                            | K-111-15 | 4304730515 | 103       | NATURAL BUTTES UNIT 2-366 | NATURAL BUTTES UNIT | 0.0    | NORTHWEST PIPELIN |       |

## OTHER PURCHASERS

8142259 OLLARONA NATURAL GAS CC

The above notices of det  
the Natural Gas Policy Act of  
(1980) is in million cubic fe

The applications for det  
Commission's Division of Publ  
accordance with 18 CFR 275.20

Categories within each NCPA section are indicated by the following codes:

Section 102-1: New OCS lease  
102-2: New well (2.5 mile rule)  
102-3: New well (1000 ft rule)  
102-4: New onshore reservoir  
102-5: New reservoir on old  
OCS lease

Section 107-DE: 15,000 feet or deeper  
107-GS: Geopressured brine  
107-CS: Coal seams  
107-DW: Devonian shale  
107-FE: Production enhancement  
107-TF: New tight formation  
107-ET: Recompletion tight formation

Section 108 : Stripper well  
108-SA: Seasonally affected  
108-ER: Enhanced recovery  
108-PB: Pressure buildup

Kenneth F. Plumb  
Secretary

BILLING CODE 6450-85-C

ditional agencies by the Federal Energy Regulatory Commission pursuant to  
s are indicated by a "D" before the section code. Estimated annual production  
denotes additional purchasers listed at the end of the notice.

the extent such material is confidential under 18 CFR 275.206, at the  
Washington, D.C. Persons objecting to any of these determinations may, in  
within-fifteen-days-after-publication of notice in the Federal Register.



The above notices of determination were received from the indicated jurisdictional agencies by the Federal Energy Regulatory Commission pursuant to the Natural Gas Policy Act of 1978 and 18 CFR 274.104. Negative determinations are indicated by a "D" before the section code. Estimated annual production (PROD) is in million cubic feet (MMCF). An (\*) before the Control (JD) number denotes additional purchasers listed at the end of the notice.

The applications for determination are available for inspection except to the

extent such material is confidential under 18 CFR 275.206, at the Commission's Division of Public Information, Room 1000, 825 North Capitol St., Washington, D.C. Persons objecting to any of these determinations may, in accordance with 18 CFR 275.203 and 275.204, file a protest with the Commission on or before August 31, 1981.

Categories within each NGPA section are indicated by the following codes:

Section 102-1: New OCS lease  
102-2: New well (2.5 mile rule)  
102-3: New (1000 ft rule)  
102-4: New onshore reservoir

102-5: New reservoir on old OCS lease  
Section 107-DP: 15,000 feet or deeper  
107-CB: Geopressed brine  
107-CS: Coal seams  
107-DV: Devonian shale  
107-PE: Production enhancement  
107-TF: New tight formation  
107-RT: Recompletion tight formation  
Section 108: Stripper well  
108-SA: Seasonally affected  
108-ER: Enhanced recovery  
108-PB: Pressure buildup

**Kenneth F. Plumb,**  
*Secretary.*

[FR Doc. 81-23750 Filed 8-13-81; 8:45 am]  
BILLING CODE 6450-85-M



[Volume 487]

## Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

Issued: August 7, 1981.

| CO AC                                      | KT | FILE NAME                        | FILE NAME | PURCHASER |
|--------------------------------------------|----|----------------------------------|-----------|-----------|
| NEW MEXICO DEPARTMENT OF ENERGY & MINERALS |    |                                  |           |           |
| RECEIVED: 07/22/81 JA: MM                  |    |                                  |           |           |
| -PERRY R BASS                              |    | 102-4 BIG EDDY UNIT NO 65        |           |           |
| 814212                                     |    | 102-4 BIG EDDY UNIT NO 65        |           |           |
| 814213                                     |    |                                  |           |           |
| UTAH DIVISION OF OIL & GAS & MINING        |    |                                  |           |           |
| RECEIVED: 07/27/81 JA: UT                  |    |                                  |           |           |
| -COASTAL OIL & GAS CORP                    |    | 103 NATURAL BUTTES 53            |           |           |
| 814214                                     |    | 4304730837                       |           |           |
| WEXPRO COMPANY                             |    |                                  |           |           |
| RECEIVED: 07/27/81 JA: UT                  |    |                                  |           |           |
| 814216                                     |    | 4303730551                       |           |           |
| 814215                                     |    | 102-2 BUG WELL NO 10             |           |           |
|                                            |    | 102-2 BUG WELL NO 4              |           |           |
| VIRGINIA DEPARTMENT OF LABOR & INDUSTRY    |    |                                  |           |           |
| RECEIVED: 07/21/81 JA: VA                  |    |                                  |           |           |
| -ASHLAND EXPLORATION INC                   |    | 108 LON E ROGERS ET AL 420 50540 |           |           |
| 814219                                     |    | 4502720111                       |           |           |
| WEST VIRGINIA DEPARTMENT OF MINES          |    |                                  |           |           |
| RECEIVED: 07/22/81 JA: WV                  |    |                                  |           |           |
| -ALFRED LEASE                              |    | 108 ALFRED LEASE NO 1            |           |           |
| 8142504                                    |    | 4701300000                       |           |           |
| ASHLAND EXPLORATION INC                    |    |                                  |           |           |
| RECEIVED: 07/22/81 JA: WV                  |    |                                  |           |           |
| 8142507                                    |    | 4703902038                       |           |           |
| 8142506                                    |    | 4703900000                       |           |           |
| BRAXTON OIL AND GAS CORP                   |    |                                  |           |           |
| RECEIVED: 07/22/81 JA: WV                  |    |                                  |           |           |
| 8142440                                    |    | 4708306332                       |           |           |
| 8142441                                    |    | 103 NO 1 L L MOSS                |           |           |
|                                            |    | 103 NO 2 L L MOSS                |           |           |
| CABOT OIL & GAS CORP                       |    |                                  |           |           |
| RECEIVED: 07/22/81 JA: WV                  |    |                                  |           |           |
| 8142436                                    |    | 4708100546                       |           |           |
| 8142437                                    |    | 4708100547                       |           |           |
| 8142438                                    |    | 4708100548                       |           |           |
| 8142433                                    |    | 4708100549                       |           |           |
| 8142439                                    |    | 4708100550                       |           |           |
| 8142435                                    |    | 4708100543                       |           |           |
| 8142462                                    |    | 4700501331                       |           |           |
| 8142454                                    |    | 4700501332                       |           |           |
| 8142434                                    |    | 4707900958                       |           |           |
| CARSON PETROLEUM CORP                      |    |                                  |           |           |
| RECEIVED: 07/22/81 JA: WV                  |    |                                  |           |           |
| 8142445                                    |    | 4701722695                       |           |           |
| 8142467                                    |    | 4704122962                       |           |           |
| CONSOLIDATED GAS SUPPLY CORPORATION        |    |                                  |           |           |
| RECEIVED: 07/22/81 JA: WV                  |    |                                  |           |           |







| JD NO                       | JA EXT | ALI NO     | D SEC CAT | WELL NAME                      | FIELD NAME               | PRCD | PURCHASER         |
|-----------------------------|--------|------------|-----------|--------------------------------|--------------------------|------|-------------------|
| 8142453                     |        | 4769701526 | 103       | SUMMERS #1                     | BURNSVILLE NORTH         | 40.0 | CONSOLIDATED GAS  |
| 8142452                     |        | 4769701527 | 103       | SUMMERS #2                     | BURNSVILLE NORTH         | 40.0 | CONSOLIDATED GAS  |
| -ERWIN GAS CO               |        |            |           | RECEIVED: 07/22/81             |                          |      |                   |
| 8142458                     |        | 4764300906 | D 108     | LINCOLN MINERAL CO #11         |                          | 0.0  | INDUSTRIAL GAS CO |
| 8142499                     |        | 4764300301 | D 108     | LINCOLN MINERAL CO #2          |                          | 0.0  | INDUSTRIAL GAS CO |
| 8142500                     |        | 4764300179 | D 108     | LINCOLN MINERAL CO #5          |                          | 0.0  | INDUSTRIAL GAS CO |
| 8142501                     |        | 4764300131 | D 108     | LINCOLN MINERAL COMPANY #3     |                          | 0.0  | INDUSTRIAL GAS CO |
| -J R LOCKNEY LEASE          |        |            |           | RECEIVED: 07/22/81             |                          |      |                   |
| 8142502                     |        | 4761300810 | 108       | J R LOCKNEY LEASE NO 1         | SHERMAN DISTRICT         | 5.2  | CONSOLIDATED GAS  |
| -JOHNSON OIL & GAS CO       |        |            |           | RECEIVED: 07/22/81             |                          |      |                   |
| 8142429                     |        | 4763302566 | 108       | JAMES MORRIS #1                | TEN MILE                 | 2.2  | PENNZOIL CO       |
| 8142430                     |        | 4763302567 | 108       | JOHN A SANDY #1                | SARCIS                   | 7.4  | PENNZOIL CO       |
| 8142428                     |        | 4763302565 | 108       | S E ADAMS #1                   | TEN MILE                 | 2.4  | PENNZOIL CO       |
| 8142431                     |        | 4763302568 | 108       | T A SWIGER #1                  | SARCIS                   | 3.3  | PENNZOIL CO       |
| -L & M OIL CO               |        |            |           | RECEIVED: 07/22/81             |                          |      |                   |
| 8142518                     |        | 4767306755 | 103       | L C WAGNER #3                  | CENTERVILLE              | 10.0 | COLUMBIA GAS TRAN |
| -L & M PETROLEUM INC        |        |            |           | RECEIVED: 07/22/81             |                          |      |                   |
| 8142474                     |        | 4767320977 | 103       | BILLY ELDER #2                 | WASINGTON                | 10.0 | COLUMBIA GAS TRAN |
| 8142519                     |        | 4767321082 | 103       | HAROLD SMITH #1                | WASHINGTON               | 8.0  | COLUMBIA GAS TRAN |
| 8142530                     |        | 4767320955 | 107-DV    | J FRANKLIN CARPENTER #4        | WASHINGTON               | 10.0 | COLUMBIA GAS TRAN |
| 8142513                     |        | 4769520813 | 103       | RALPH WESTFALL #1              | CENTERVILLE              | 11.0 | COLUMBIA GAS TRAN |
| 8142515                     |        | 4769520846 | 103       | WARNER #1                      | CENTERVILLE              | 7.0  | COLUMBIA GAS TRAN |
| -LOTTIE GUNN GAS CO         |        |            |           | RECEIVED: 07/22/81             |                          |      |                   |
| 8142503                     |        | 4761301141 | 108       | LOTTIE GUNN GAS COMPANY NO 1   | CENTER DISTRICT          | 0.0  | CONSOLIDATED GAS  |
| -NRW PETROLEUM CORPORATION  |        |            |           | RECEIVED: 07/22/81             |                          |      |                   |
| 8142510                     |        | 4763302398 | 103       | CLEER #3                       | GLADE RUN                | 6.0  |                   |
| 8142427                     |        | 4763302525 | 103       | CLEER #5                       | GLADE RUN                | 0.0  |                   |
| 8142511                     |        | 4763302527 | 103       | DOUGLAS #1                     | GLADE RUN                | 0.0  |                   |
| -PENNZOIL COMPANY           |        |            |           | RECEIVED: 07/22/81             |                          |      |                   |
| 8142505                     |        | 4762103353 | 108       | EARL HARDMAN #5                | DEKALB                   | 0.0  | CONSOLIDATED GAS  |
| -RICHARD & GREICHEN P OYLER |        |            |           | RECEIVED: 02/09/81             |                          |      |                   |
| 8142418                     |        | 4761701143 | 108       | H H KNIGHT #10                 | GRANT DISTRICT           | 3.0  | PENNZOIL CO       |
| 8142417                     |        | 4761701015 | 108       | H H KNIGHT #9                  | GRANT DISTRICT           | 3.0  | PENNZOIL CO       |
| -ST CLAIR OIL CO            |        |            |           | RECEIVED: 07/22/81             |                          |      |                   |
| 8142485                     |        | 4764122737 | 103       | J W & R E LINGER NO 1          | COLLINS SETTLEMENT       | 50.0 | EQUITABLE GAS CO  |
| 8142432                     |        | 4764122861 | 103       | R N WHITE NO 2                 | COLLINS SETTLEMENT       | 73.0 | EQUITABLE GAS CO  |
| -STAR GAS COMPANY           |        |            |           | RECEIVED: 07/22/81             |                          |      |                   |
| 8142497                     |        | 4769500007 | D 108     | ELLEN ENDICOTT #1              |                          | 0.0  | COLUMBIA GAS TRAN |
| -STONEWALL GAS CO INC       |        |            |           | RECEIVED: 07/22/81             |                          |      |                   |
| 8142444                     |        | 4761702852 | 103       | ORRHOOD #1                     |                          | 0.0  | CONSOLIDATED GAS  |
| 8142483                     |        | 4763302473 | 103       | WILLIAM J NUZUM #1             | COBURN FORK TENMILE CIST | 0.0  | CONSOLIDATED GAS  |
| -SWIFT ENERGY CO            |        |            |           | RECEIVED: 07/22/81             |                          |      |                   |
| 8142447                     |        | 4762103712 | 103       | BURKE NO 1                     | GLENVILLE NORTH          | 50.0 | COLUMBIA GAS TRAN |
| 8142446                     |        | 4762103643 | 103       | DAVIS J NO 2                   | GLENVILLE NORTH          | 50.0 |                   |
| -UNION DRILLING INC         |        |            |           | RECEIVED: 07/22/81             |                          |      |                   |
| 8142475                     |        | 4769701764 | 108       | ARCIE F HYRE #1 1402           | MEADE DISTRICT           | 18.0 | COLUMBIA GAS TRAN |
| 8142481                     |        | 4769701526 | 108       | CECILE W HYRE #5 1511          | WASHINGTON DISTRICT      | 6.0  | EQUITABLE GAS     |
| 8142479                     |        | 4769701873 | 108       | JOHN W MONTGOMERY #1 1462      | UNION DISTRICT           | 15.0 | COLUMBIA GAS TRAN |
| 8142482                     |        | 4769701540 | 108       | JOHN W MONTGOMERY #1 1513      | UNION DISTRICT           | 5.0  | COLUMBIA GAS TRAN |
| 8142514                     |        | 4769701561 | 108       | LEOTA L BRADY #1 1327          | MEADE DISTRICT           | 16.0 | COLUMBIA GAS TRAN |
| 8142478                     |        | 4769701857 | 108       | MARVIN MARSH #1 1455           | MEADE DISTRICT           | 17.0 | COLUMBIA GAS TRAN |
| 8142476                     |        | 4769701724 | 108       | MCCLELLAN BRAKE ESTATE #1 1412 | MEADE DISTRICT           | 19.0 | COLUMBIA GAS TRAN |
| 8142420                     |        | 4760101125 | 108       | ORION HATHAWAY #1 1496         | BARKER DISTRICT          | 11.0 | COLUMBIA GAS TRAN |



PAGE 004

VOLUME 487

| UD NO                                     | JA INT | AFI NO                | O SEC CAT | WELL NAME                       | FIELD NAME               | PRCU | PURCHASER               |
|-------------------------------------------|--------|-----------------------|-----------|---------------------------------|--------------------------|------|-------------------------|
| 8142426                                   |        | 4703301125            | 108       | PERRY L HALL #1 1417            | EAGLE DISTRICT           |      | 2.0 CONSOLIDATED GAS    |
| 8142480                                   |        | 4709701880            | 108       | SUSSELL M & ANNA R LAKE #1 1470 | BANKS DISTRICT           |      | 15.0 COLUMBIA GAS TRAN  |
| 8142477                                   |        | 4709701840            | 108       | WAYNE LEAR #1 1450              | MEADE DISTRICT           |      | 15.0 COLUMBIA GAS TRAN  |
| -UPLAND RESOURCES INC                     |        |                       |           | RECEIVED: 07/22/81 JA: WV       |                          |      |                         |
| 8142969                                   |        | 4705700032            | 102-2     | BORROR NO 1                     | HEADSVILLE FIELD         |      | 0.0                     |
| 8142970                                   |        | 4705700040            | 102-2     | CALAMINE NO 1                   | HEADSVILLE FIELD         |      | 0.0                     |
| 8142473                                   |        | 4705700048            | 102-2     | FERTIG NO 1                     | HEADSVILLE FIELD         |      | 0.0                     |
| 8142968                                   |        | 4705700031            | 102-2     | LYONS NO 1                      | HEADSVILLE FIELD         |      | 0.0                     |
| 8142472                                   |        | 4705700047            | 102-2     | MCDONALD NO 1                   | HEADSVILLE FIELD         |      | 0.0                     |
| 8142471                                   |        | 4705700046            | 102-2     | RODENECAVER NO 2                | HEADSVILLE FIELD         |      | 0.0                     |
| -U.S. GEOLOGICAL SURVEY - DENVER, CO      |        |                       |           |                                 |                          |      |                         |
| -AMERICAN RESOURCES MANAGEMENT CORPO      |        |                       |           | RECEIVED: 07/21/81 JA: CO 1     |                          |      |                         |
| 8142397                                   |        | CD 8205-81 0510308217 | 103       | T C #12-1X C-3640               | TRAIL CANYON FIELD       |      | 8.7 NORTHWEST PIPELIN   |
| -CHANDLER & ASSOCIATES INC                |        |                       |           | RECEIVED: 07/21/81 JA: CO 1     |                          |      |                         |
| 8142398                                   |        | CD 8236-81 0507708197 | 107-TF    | N PLATEAU CREEK FED 11-32       | PLATEAU                  |      | 160.0 NORTHWEST PIPELIN |
| -COMOCO INC                               |        |                       |           | RECEIVED: 07/21/81 JA: CO 1     |                          |      |                         |
| 8142388                                   |        | CD 0275-80 0510308455 | 103       | ORAGON TRAIL UNIT NC 47         | DOUGLAS CREEK            |      | 274.0 WESTERN SLOPE GAS |
| 8142389                                   |        | CD 0265-80 0510308456 | 103       | ORAGON TRAIL UNIT NC 49         | DOUGLAS CREEK            |      | 182.0 WESTERN SLOPE GAS |
| 8142409                                   |        | CD 0072-80 0510308487 | 103       | ORAGON TRAIL UNIT NC 50         | DOUGLAS CREEK            |      | 182.0 WESTERN SLOPE GAS |
| 8142411                                   |        | CD 0074-80 0510308504 | 103       | ORAGON TRAIL UNIT NC 51         | DOUGLAS CREEK            |      | 274.0 WESTERN SLOPE GAS |
| 8142410                                   |        | CD 0073-80 0510308503 | 103       | ORAGON TRAIL UNIT NC 52         | DOUGLAS CREEK            |      | 274.0 WESTERN SLOPE GAS |
| 8142408                                   |        | CD 0071-80 0510308507 | 103       | ORAGON TRAIL UNIT NC 53         | DOUGLAS CREEK            |      | 182.0 WESTERN SLOPE GAS |
| 8142407                                   |        | CD 0070-80 0510308509 | 103       | ORAGON TRAIL UNIT NC 54         | DOUGLAS CREEK            |      | 182.0 WESTERN SLOPE GAS |
| 8142406                                   |        | CD 0069-80 0510308506 | 103       | ORAGON TRAIL UNIT NC 55         | DOUGLAS CREEK            |      | 182.0 WESTERN SLOPE GAS |
| 8142405                                   |        | CD 0068-80 0510308508 | 103       | ORAGON TRAIL UNIT NC 57         | DOUGLAS CREEK            |      | 182.0 WESTERN SLOPE GAS |
| 8142390                                   |        | CD 0067-80 0510308460 | 103       | WEST DOUGLAS CREEK AC 14        | DOUGLAS CREEK            |      | 274.0 WESTERN SLOPE GAS |
| 8142391                                   |        | CD 0066-80 0510308502 | 103       | WEST DOUGLAS CREEK AC 15        | DOUGLAS CREEK            |      | 274.0 WESTERN SLOPE GAS |
| -MESA PETROLEUM                           |        |                       |           | RECEIVED: 07/21/81 JA: CO 1     |                          |      |                         |
| 8142392                                   |        | CD 0123-81 0512506378 | 107-TF    | FEDERAL #1-5                    | ECKLEY                   |      | 55.0 CITIES SERVICE GA  |
| -SUPRON ENERGY CORPORATION                |        |                       |           | RECEIVED: 07/21/81 JA: CO 1     |                          |      |                         |
| 8142396                                   |        | CD 8234-81 0506705106 | 108       | IVIE #1                         | IGNACIO BLANCO MESAVERDE |      | 12.2 NORTHERN NATURAL   |
| -TWIN ARROW INC                           |        |                       |           | RECEIVED: 07/21/81 JA: CO 1     |                          |      |                         |
| 8142404                                   |        | CD 8238-81 0510308819 | 103       | CONTINENTAL 1-28                | CATHEDRAL                |      | 73.0 NORTHWEST PIPELIN  |
| 8142393                                   |        | CD 0239-81 0510308186 | 103       | CONTINENTAL 2-28                | CATHEDRAL                |      | 73.0 NORTHWEST PIPELIN  |
| 8142395                                   |        | CD 0241-81 0510308430 | 103       | RAINBOW-CONTINENTAL 1-21        | CATHEDRAL                |      | 73.0 NORTHWEST PIPELIN  |
| -COSEKA RESOURCES (USA) LIMITED           |        |                       |           | RECEIVED: 07/21/81 JA: UT 1     |                          |      |                         |
| 8142403                                   |        | UD 0232-81 4304730736 | 102-2     | 7-17-15-23                      | WILDCAT                  |      | 370.0 NATURAL GAS CORP  |
| -TEXACO INC                               |        |                       |           | RECEIVED: 07/21/81 JA: UT 1     |                          |      |                         |
| 8142401                                   |        | UD 0223-81 4303730635 | 103       | ANETH UNIT WELL NO 8-214        | ANETH                    |      | 62.7 EL PASO NATURAL G  |
| 8142387                                   |        | UD 0222-81 4303730636 | 103       | ANETH UNIT WELL NO C-114        | ANETH                    |      | 49.0 EL PASO NATURAL G  |
| 8142394                                   |        | UD 0231-81 4303730637 | 103       | ANETH UNIT WELL NO C-314        | ANETH                    |      | 54.7 EL PASO NATURAL G  |
| 8142402                                   |        | UD 0224-81 4303730638 | 103       | ANETH UNIT WELL NO D-214        | ANETH                    |      | 6.4 EL PASO NATURAL G   |
| 8142400                                   |        | UD 0225-81 4303730629 | 103       | ANETH UNIT WELL NO D-414        | ANETH                    |      | 21.9 EL PASO NATURAL G  |
| 8142399                                   |        | UD 0206-81 4303730346 | 103       | ANETH UNIT WELL NO E-422        | ANETH                    |      | 1.2 EL PASO NATURAL G   |
| -U.S. GEOLOGICAL SURVEY - ALBUQUERQUE, NM |        |                       |           |                                 |                          |      |                         |
| -ALPHA TWENTY-ONE PRODUCTION CO           |        |                       |           | RECEIVED: 07/20/81 JA: NM 4     |                          |      |                         |
| 8142310                                   |        | NM-1575-80 3002526708 | 103       | EL PASO TOM FEDERAL NC 1        | LANGLIE MATIIX - SEVEN R |      | 110.0 EL PASO NATURAL G |
| 8142311                                   |        | NM 1585-80 3002526725 | 103       | EL PASO TOM FEDERAL NC 2        | LANGLIE MATIIX - SEVEN R |      | 180.0 EL PASO NATURAL G |
| -AMOCO PRODUCTION CO                      |        |                       |           | RECEIVED: 07/20/81 JA: NM 4     |                          |      |                         |



| AC NO                        | JA JKT       | API NO      | C SEC CAT WELL NAME                   | FILE NAME                | PROC  | PURCHASER         |
|------------------------------|--------------|-------------|---------------------------------------|--------------------------|-------|-------------------|
| 8142315                      | NM-1671-80   | 3004523310  | 108 ELLIOTT GAS COM X WELL #1         | BASIN DAKOTA             | 21.0  | EL PASO NATURAL G |
| 8142318                      | NM-1755-80   | 3004507973  | 108 FEDERAL GAS COM 3 WELL #1         | AZTEC-PICTURED CLIFFS    | 21.0  | EL PASO NATURAL G |
| 8142323                      | NM-0421-81-A | 3003922347  | 103 JICARILLA CONT 155 # 13E (CHACRA) | OTERO CHACRA             | 10.0  | NORTHWEST PIPELIN |
| 8142316                      | NM-1672-80   | 3004520715  | 108 SHAW GAS COM B WELL #1            | BLANCO PICTURED CLIFFS   | 21.0  | EL PASO NATURAL G |
| -APOLLO OIL COMPANY          |              |             |                                       |                          |       |                   |
| 8142300                      | NM089-81-ER  | 3002510813  | 108-ER LA MOUNTAIN #1                 | LANGLIE MATIIX           | 60.0  | EL PASO NATURAL G |
| -CONOCO INC                  |              |             |                                       |                          |       |                   |
| 8142351                      | NM-0587-81   | 3002509011  | 108 MEYER B-23 NO 3                   | NMFU - JALMAT YATES GAS  | 13.1  | EL PASO NATURAL G |
| 8142350                      | NM-0586-81   | 3002506240  | 108 SEMU EUMONT NO 67                 | NMFU - EUMONT YATES      | 10.0  | EL PASO NATURAL G |
| 8142353                      | NM-0585-81   | 3002510753  | 108 STEVENS B NO 16                   | NMFU - JALMAT YATES      | 11.3  | EL PASO NATURAL G |
| 8142352                      | NM-0588-81   | 3002521460  | 108 WELLS B-1 NO 3                    | NMFU - JALMAT YATES      | 12.2  | EL PASO NATURAL G |
| -CONSOLIDATED OIL & GAS INC  |              |             |                                       |                          |       |                   |
| 8142374                      | NM-0603-81   | 3004507615  | 108 MANLEY NO 1                       | FULCHER KUTZ-PICTURED CL | 16.0  | SOUTHERN UNION GA |
| -DAVE M THOMAS JR            |              |             |                                       |                          |       |                   |
| 8142347                      | NM-0575-81   | 3003921456  | 108 CHACON JICARILLA #10              | BALLARD PICTURED CLIFFS  | 13.7  | EL PASO NATURAL G |
| 8142348                      | NM-0577-81   | 3003921346  | 108 CHACON JICARILLA #6               | BALLARD PICTURED CLIFFS  | 14.7  | EL PASO NATURAL G |
| 8142349                      | NM-0578-81   | 3004520267  | 108 CHACON JICARILLA #8               | BALLARD PICTURED CLIFFS  | 12.4  | EL PASO NATURAL G |
| -DEPCO INC                   |              |             |                                       |                          |       |                   |
| 8142357                      | NM-0638-81   | 30039006516 | 108 JENKINS NO 1                      | S BLANCO - PICTURED CLIF | 20.2  | EL PASO NATURAL G |
| 8142356                      | NM-0637-81   | 30039006712 | 108 MKL #14 (AKA MKL #3-14)           | S BLANCO - PICTURED CLIF | 16.8  | EL PASO NATURAL G |
| 8142355                      | NM-0636-81   | 30039006673 | 108 MKL #9 (AKA MKL #2-9)             | S BLANCO - PICTURED CLIF | 20.7  | EL PASO NATURAL G |
| 8142358                      | NM-0639-81   | 30035006653 | 108 MKL X #16 (AKA MKL X #5-16)       | S BLANCO - PICTURED CLIF | 9.9   | EL PASO NATURAL G |
| -DUGAN PRODUCTION CORP       |              |             |                                       |                          |       |                   |
| 8142330                      | NM 0537-81   | 3004524223  | 103 LA LEE ANN #4                     | MAW FRUITLAND PC         | 12.0  | EL PASO NATURAL G |
| -EL PASO NATURAL GAS COMPANY |              |             |                                       |                          |       |                   |
| 8142321                      | NM-0266-81   | 3003520271  | 108 CANYON LARGO UNIT #151            | OTERO CHACRA             | 19.0  | EL PASO NATURAL G |
| 8142303                      | NM-1036-80   | 3004500000  | 108 FLORANCE C #5                     | BASIN - DAKOTA           | 23.0  | EL PASO NATURAL G |
| 8142313                      | NM-1646-80   | 3004520334  | 108 HOWELL #6                         | SOUTH BLANCO-PICTURED CL | 20.0  | EL PASO NATURAL G |
| 8142317                      | NM-1681-80   | 3004520419  | 108 HUERFANO UNIT #150                | BASIN-DAKOTA             | 20.0  | EL PASO NATURAL G |
| 8142320                      | NM-0262-81   | 3004521219  | 108 HUERFANO UNIT #238                | ANGELS PEAK - GALLUP GAS | 20.0  | EL PASO NATURAL G |
| 8142305                      | NM-1191-80   | 3004521653  | 108 HUERFANO UNIT #274                | BASIN-DAKOTA GAS         | 6.0   | EL PASO NATURAL G |
| 8142382                      | NM-0702-81   | 3004523835  | 103 HUERFANO UNIT #283                | BASIN DAKOTA             | 65.0  | EL PASO NATURAL G |
| 8142307                      | NM-1432-80   | 3004521139  | 108 HUGHES A #8                       | BLANCO-PICTURED CLIFFS   | 23.0  | EL PASO NATURAL G |
| 8142328                      | NM-0517-81   | 3003922067  | 108 LINDRITH UNIT #96                 | SOUTH BLANCO - PICTURED  | 16.0  | EL PASO NATURAL G |
| 8142337                      | NM-0545-81-A | 3003922183  | 103 SAN JUAN 27-5 UNIT #25A           | BLANCO MESAVERDE         | 220.0 | EL PASO NATURAL G |
| 8142338                      | NM-0545-81-B | 3003922183  | 103 SAN JUAN 27-5 UNIT #25A           | TAPACITO PICTURED CLIFFS | 55.0  | EL PASO NATURAL G |
| 8142332                      | NM 0539-81   | 3003922231  | 103 SAN JUAN 28-5 UNIT #17A           | BLANCO MESAVERDE         | 220.0 | EL PASO NATURAL G |
| 8142326                      | NM-0474-81   | 3003920601  | 108 SAN JUAN 28-6 UNIT #173           | SOUTH BLANCO - PICTURED  | 23.0  | EL PASO NATURAL G |
| 8142331                      | NM 0538-81   | 3003922361  | 103 SAN JUAN 28-7 UNIT #195E          | BASIN DAKOTA             | 110.0 | EL PASO NATURAL G |
| 8142385                      | NM-0705-81   | 3003922426  | 103 SAN JUAN 28-7 UNIT #231E          | BASIN DAKOTA             | 110.0 | EL PASO NATURAL G |
| 8142386                      | NM-0706-81   | 3003922356  | 103 SAN JUAN 28-7 UNIT #234E          | BASIN DAKOTA             | 100.0 | EL PASO NATURAL G |
| 8142383                      | NM-0703-81   | 3003922356  | 103 SAN JUAN 28-7 UNIT #241E          | BASIN DAKOTA             | 85.0  | EL PASO NATURAL G |
| 8142384                      | NM-0704-81   | 3003922357  | 103 SAN JUAN 28-7 UNIT #255E          | BASIN DAKOTA             | 125.0 | EL PASO NATURAL G |
| 8142333                      | NM 0540-81-A | 3003922238  | 103 SAN JUAN 28-7 UNIT #23A           | BLANCO MESAVERDE         | 290.0 | EL PASO NATURAL G |
| 8142334                      | NM 0540-81-B | 3003922238  | 103 SAN JUAN 28-7 UNIT #33A           | UNDESIGNATED PICTURED CL | 35.0  | EL PASO NATURAL G |
| 8142354                      | NM-0635-81   | 3004506466  | 108 SCHWERTFEGGER A #2                | MTH BLANCO - PICTURED    | 18.0  | EL PASO NATURAL G |
| 8142309                      | NM-1556-80   | 3004522632  | 108 SCOTT #21                         | MT NEBO-FRUITLAND        | 13.0  | EL PASO NATURAL G |
| 8142381                      | NM-0701-81   | 3004524454  | 103 SOSE #1                           | BASIN DAKOTA             | 30.0  | EL PASO NATURAL G |
| 8142377                      | NM-0659-81-A | 3004524139  | 103 SUNRAY D #1A                      | BLANCC MESAVERDE         | 110.0 | EL PASO NATURAL G |
| 8142378                      | NM-0659-81-B | 3004524139  | 103 SUNRAY D #1A                      | AZTEC PICTURED CLIFFS    | 30.0  | EL PASO NATURAL G |
| 8142335                      | NM-0544-81-A | 3004523831  | 103 SUNRAY D #2A                      | BLANCC MESAVERDE         | 290.0 | EL PASO NATURAL G |
| 8142336                      | NM-0544-81-B | 3004523831  | 103 SUNRAY D #2A                      | AZTEC PICTURED CLIFFS    | 35.0  | EL PASO NATURAL G |



PAGE 006

VOLUME 487

| JO NO                               | JA DKT        | API NO     | C SEC | CAT | WELL NAME                        | FIELD NAME               | PROD  | PURCHASER         |
|-------------------------------------|---------------|------------|-------|-----|----------------------------------|--------------------------|-------|-------------------|
| 8142379                             | NM-0700-81-A  | 3004523862 | 103   |     | SUNRAY D #2R                     | BLANCO MESAVERDE         | 90.0  | EL PASO NATURAL G |
| 8142380                             | NM-0700-81-B  | 3004523862 | 103   |     | SUNRAY D #2R                     | BLANCO PICTURED CLIFFS   | 50.0  | EL PASO NATURAL G |
| 8142312                             | NM-1645-80    | 3003928258 | 108   |     | VAUGHN #10                       | OTERO-CHACRA             | 21.0  | EL PASO NATURAL G |
| -EL RAN INC                         |               |            |       |     | RECEIVED: 07/20/81               |                          |       |                   |
| 8142329                             | NM-0519-81    | 3000528764 | 103   |     | DACHNER #6                       | CHAVEZ                   | 36.0  | TRANSWESTERN PIPE |
| -ENERGY RESERVES GROUP INC          |               |            |       |     | RECEIVED: 07/20/81               |                          |       |                   |
| 8142327                             | NM-0516-81    | 3004524735 | 103   |     | GALLEGO CANYON (FRUITLAND) #328  | KUTZ FRUITLAND WEST      | 86.0  | EL PASO NATURAL G |
| 8142339                             | NM-0557-81    | 3004524718 | 103   |     | MILLER GAS CO B #1-E             | BASIN DAKOTA             | 115.2 | EL PASO NATURAL G |
| 8142340                             | NM-0558-81    | 3004524749 | 103   |     | O M RANDEL #7                    | BASIN DAKOTA             | 117.0 | EL PASO NATURAL G |
| -ESTORIL PRODUCING CORP             |               |            |       |     | RECEIVED: 07/20/81               |                          |       |                   |
| 8142324                             | NM-0446-81-B  | 3002526088 | 103   |     | BELCO FEDERAL #1                 | ANTELOPE RIDGE (STRAWN G | 292.0 | GAS CO OF NEW MEX |
| -GULF OIL CORPORATION               |               |            |       |     | RECEIVED: 07/20/81               |                          |       |                   |
| 8142373                             | NM-0681-81    | 3004524549 | 103   |     | FULLERTON FEDERAL CCM WELL NO 15 | WEST KUTZ PICTURED CLIFF | 0.0   | EL PASO NATURAL G |
| -MIXON DEVELOPMENT COMPANY          |               |            |       |     | RECEIVED: 07/20/81               |                          |       |                   |
| 8142308                             | NM-1487-80    | 3004523357 | 108   |     | FEDERAL C WELL NO 5              | WILDCAT - FARMINGTON SAN | 10.4  | EL PASO NATURAL G |
| -HUSKY OIL COMPANY                  |               |            |       |     | RECEIVED: 07/20/81               |                          |       |                   |
| 8142302                             | NM-2702-79    | 3004500000 | 108   |     | ALICE HOLACK #11                 | WEST KUTZ PICTURED CLIFF | 14.1  | EL PASO NATURAL G |
| -J GREGORY MERRION ROBERT L BAYLESS |               |            |       |     | RECEIVED: 07/20/81               |                          |       |                   |
| 8142361                             | NM-0642-81    | 3004523034 | 108   |     | HI ROLL #3                       | WAM FRUITLAND/PICTURED C | 15.0  | SOUTHWEST GAS COR |
| 8142360                             | NM-0641-81    | 3004523838 | 108   |     | INEZ #1                          | WAM FRUITLAND/PICTURED C | 8.5   | EL PASO NATURAL G |
| 8142359                             | NM-0640-81    | 3004520251 | 108   |     | JICARILLA 429-3                  | BALLARD PICTURED CLIFFS  | 1.0   | EL PASO NATURAL G |
| 8142345                             | NM-0567-81    | 3004320507 | 103   |     | PONCA #2                         | BALLARD PIC CLIFFS       | 5.0   | GAS CO OF NEW MEX |
| -LIVELY EXPLORATION COMPANY         |               |            |       |     | RECEIVED: 07/20/81               |                          |       |                   |
| 8142325                             | NM-0468-81    | 3004523969 | 103   |     | LIVELY 2-E                       | BASIN DAKOTA             | 111.0 | EL PASO NATURAL G |
| -MESA PETROLEUM                     |               |            |       |     | RECEIVED: 07/20/81               |                          |       |                   |
| 8142367                             | NM-0673-81-A  | 3004524059 | 103   |     | FEDERAL #6M                      | BLANCO MESAVERDE         | 580.0 | EL PASO NATURAL G |
| 8142368                             | NM-0673-81-B  | 3004524059 | 103   |     | FEDERAL #6M                      | BASIN DAKOTA             | 130.0 | EL PASO NATURAL G |
| 8142362                             | NM-0645-81    | 3003922519 | 103   |     | SOUTH BLANCO 31-1                | LYBROOK                  | 22.0  | GAS CO OF NEW MEX |
| -NORTHWEST PIPELINE CORPORATION     |               |            |       |     | RECEIVED: 07/20/81               |                          |       |                   |
| 8142341                             | NM-0560-81    | 3004524526 | 103   |     | BLANCO #2A                       | BLANCO MESAVERDE         | 90.0  | EL PASO NATURAL G |
| 8142342                             | NM-0561-81    | 3003921133 | 108   |     | JICARILLA 93 #10                 | TAPACITO PICTURED CLIFFS | 24.0  | NORTHWEST PIPELIN |
| 8142304                             | NM-1166-80    | 3003907970 | 108   |     | ROSA UNIT #12                    | BLANCO MESAVERDE         | 0.0   | EL PASO NATURAL G |
| 8142314                             | NM-1666-80    | 3003921396 | 108   |     | ROSA UNIT #61                    | BASIN DAKOTA             | 21.0  | NORTHWEST PIPELIN |
| 8142346                             | NM-0571-81    | 3003920712 | 108   |     | SAN JUAN 25-5 #68                | BASIN DAKOTA             | 19.0  | EL PASO NATURAL G |
| -SOUTHLAND ROYALTY CO               |               |            |       |     | RECEIVED: 07/20/81               |                          |       |                   |
| 8142369                             | NM-0676-81(A) | 3004524443 | 103   |     | HARE #15M                        | BASIN                    | 150.0 | SOUTHERN UNION GA |
| 8142370                             | NM-0676-81(F) | 3004524443 | 103   |     | HARE #15M                        | BLANCO                   | 250.0 | SOUTHERN UNION GA |
| 8142371                             | NM-0678-81    | 3004524002 | 103   |     | MCDANIEL C #1E                   | BASIN                    | 175.0 | SOUTHERN UNION GA |
| 8142372                             | NM-0679-81    | 3004524709 | 103   |     | REESE MESA #7                    | CORBIN SOUTH             | 200.0 | NORTHWEST PIPELIN |
| 8142375                             | NM-0685-81    | 3002524744 | 108   |     | WEST CORBIN #1                   |                          | 7.6   | GAS CO OF NEW MEX |
| -SUN OIL COMPANY (DELAWARE)         |               |            |       |     | RECEIVED: 07/20/81               |                          |       |                   |
| 8142319                             | NM-1828-80    | 3000500000 | 108   |     | WOODMAN FEDERAL #6               | CATC-SAN ANDRES          | 1.0   | CITIES SERVICE CO |
| -SUPERIOR OIL CO                    |               |            |       |     | RECEIVED: 07/20/81               |                          |       |                   |
| 8142322                             | NM-0286-81    | 3001523457 | 102-2 |     | WEAVER FEDERAL NO 2              | WOLF CAMP                | 0.0   | BIXCO INC         |
| -TOM BOLACK                         |               |            |       |     | RECEIVED: 07/20/81               |                          |       |                   |
| 8142343                             | NM-0566-81-A  | 3004524575 | 103   |     | TOMMY BOLACK #1                  | SAN JUAN                 | 15.0  | EL PASO NATURAL G |
| 8142344                             | NM-0566-81-B  | 3004524575 | 103   |     | TOMMY BOLACK #1                  | SAN JUAN                 | 15.0  | EL PASO NATURAL G |
| -VATES PETROLEUM CORPORATION        |               |            |       |     | RECEIVED: 07/20/81               |                          |       |                   |
| 8142376                             | NM-0686-81    | 3001523646 | 103   |     | FEDERAL AB #7                    | RICHARD KNOE-ATOKA MORRO | 0.0   | TRANSWESTERN PIPE |
| -BERRY PETROLEUM CORP               |               |            |       |     | RECEIVED: 07/20/81               |                          |       |                   |
| 8142301                             | OK-0075-81    | 3509321957 | 103   |     | STAPLEY #1-15                    | SCORER TRENC             | 150.0 | PIONEER GAS PRODU |
| MTS LIMITED PARTNERSHIP             |               |            |       |     | RECEIVED: 07/20/81               |                          |       |                   |



VOLUME 487

PAGE 007

| JD No.  | JA         | API NO     | E SEC CAT | WELL NAME                  | FIELD NAME          | PRCD                   | PURCHASER |
|---------|------------|------------|-----------|----------------------------|---------------------|------------------------|-----------|
| 8142363 | NM 0646-81 | 3004524454 | 103       | SOUTH BLANCO FED 25 #1     | LYERCOCK            | 22.0 GAS CO OF NEW MEX |           |
| 8142366 | NM 0649-81 | 3004524783 | 103       | SOUTH BLANCO FEDERAL 25 #2 | LYERCOCK GALLUP EXT | 18.0 GAS CO OF NEW MEX |           |
| 8142365 | NM 0648-81 | 3004524782 | 103       | SOUTH BLANCO FEDERAL 25 #3 | LYERCOCK GALLUP EXT | 18.0 GAS CO OF NEW MEX |           |
| 8142364 | NM 0647-81 | 3004524781 | 103       | SOUTH BLANCO FEDERAL 25 #4 | LYERCOCK GALLUP EXT | 18.0 GAS CO OF NEW MEX |           |

## CORRECTIONS TO PREVIOUS NOTICES/REVISIONS TO PRIOR DETERMINATIONS

| JD No.   | JA | APPLICANT              | WELL NAME               | ORIG. PERC VOL. NO. | DATE PUB. IN FEDERAL REGISTER | R: Revision or redetermination by Jurisdictional Agency | C: Correction to prior Fed. Reg. Notice |
|----------|----|------------------------|-------------------------|---------------------|-------------------------------|---------------------------------------------------------|-----------------------------------------|
| 80-12571 | OK | Michigan Wisc Pipeline | Hots #1                 | 145                 | 2/20/80                       |                                                         | C: 102 and 103 approved                 |
| 80-47989 | WV | Fox Drilling Co. Inc.  | Stemple #1              | 259                 | 8/25/80                       |                                                         | R: 107-DW Denied 7/29/81                |
| 81-06164 | OK | Andover Oil Co.        | Jensen #35-3            | 329                 | 12/12/80                      |                                                         | C: Well Name                            |
| 81-30570 | TX | Exxon Co., U.S.A.      | K R Alcan 321-D         | 439                 | 6/17/81                       |                                                         | C: Well name                            |
| 81-38352 | OK | Andover Oil Co         | Floyd Miller #31-3      | 471                 |                               |                                                         | C: 102-2 and 103 approved               |
| 81-38575 | TX | Delta Drilling Co      | Fowler #1               | 472                 | 7/30/81                       |                                                         | C: 102-3, 103 and 107-TF approv         |
| 81-38577 | TX | Delta Drilling Co      | Coleman #1              | 472                 | 7/30/81                       |                                                         | C: 102-3, 103 and 107-TF approv         |
| 81-39993 | PA | Angerman Assoc. Inc.   | Katherine D. Coleman #7 | 477                 |                               |                                                         | C: Well Name                            |

The above notices of determination were re: the Natural Gas Policy Act of 1978 and 18 CFR 2. (PROD) is in million cubic feet (MMCF). An (\*)

The applications for determination are avai Commission's Division of Public Information, Rec accordance with 18 CFR 275.203 and 275.204, file

Categories within each NEPA section are indicated by the following codes:

|                                       |                                       |
|---------------------------------------|---------------------------------------|
| Section 102-1: New OCS lease          | Section 107-DP: 15,000 feet or deeper |
| 102-2: New well (2.5 mile rule)       | 107-CB: Geopressed brine              |
| 102-3: New well (1000 ft rule)        | 107-CS: Coal seams                    |
| 102-4: New onshore reservoir          | 107-SW: Devonian shale                |
| 102-5: New reservoir on old OCS lease | 107-FE: Production enhancement        |
|                                       | 107-TF: New tight formation           |
|                                       | 107-ET: Recompletion tight formation  |

BILLING CODE 6450-65-C

by the Federal Energy Regulatory Commission pursuant to a "D" before the section code. Estimated annual production purchasers listed at the end of the notice.

terial is confidential under 18 CFR 275.206, at the Persons objecting to any of these determinations may, in after publication of notice to the Federal Register

1981 8 14 10 31

Section 108 : Stripper well  
108-SA: Seasonally affected  
108-ER: Enhanced recovery  
108-PB: Pressure buildup

Kenneth F. Plumb  
Secretary



The above notices of determination were received from the indicated jurisdictional agencies by the Federal Energy Regulatory Commission pursuant to the Natural Gas Policy Act of 1978 and 18 CFR 274.104. Negative determinations are indicated by a "D" before the section code. Estimated annual production (PROD) is in million cubic feet (MMCF). An (\*) before the Control (JD) number denotes additional purchasers listed at the end of the notice.

The applications for determination are available for inspection except to the

extent such material is confidential under 18 CFR 275.206, at the Commission's Division of Public Information, Room 1000, 825 North Capitol St., Washington, D.C. Persons objecting to any of these determinations may, in accordance with 18 CFR 275.203 and 275.204, file a protest with the Commission on or before August 31, 1981.

Categories within each NGPA section are indicated by the following codes:

Section 102-1: New OCS lease  
102-2: New well (2.5 mile rule)  
102-3: New well (1000 ft rule)  
102-4: New onshore reservoir

102-5: New reservoir on old OCS lease  
Section 107-DP: 15,000 feet or deeper  
107-GB: Geopressured brine  
107-CS: Coal seams  
107-DV: Devonian shale  
107-PE: Production enhancement  
107-TF: New tight formation  
107-RT: Recompletion tight formation  
Section 108: Stripper well  
108-SA: Seasonally affected  
108-ER: Enhanced recovery  
108-PB: Pressure buildup

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc 81-23757 Filed 8-13-81; 8:45 am]

**BILLING CODE 6450-85-M**



## Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

Issued: August 4, 1981.

| JD NO                               | JA OKT | API NO     | D SEC CAT | WELL NAME                 | FIELD NAME   | PROD  | PURCHASER         |
|-------------------------------------|--------|------------|-----------|---------------------------|--------------|-------|-------------------|
| OKLAHOMA CORPORATION COMMISSION     |        |            |           |                           |              |       |                   |
| -----                               |        |            |           |                           |              |       |                   |
| -AMR PRODUCTION CO                  |        |            |           | RECEIVED: 07/15/81 JA: OK |              |       |                   |
| 8141705                             | 12769  | 3514920108 | 107-0P    | MARKENTIN #1-30           |              | 182.5 | MICHIGAN WISCONS  |
| -APACHE CORPORATION                 |        |            |           | RECEIVED: 07/15/81 JA: OK |              |       |                   |
| 8141685                             | 10679  | 3500920309 | 102-3     | MIKLES #1-10              |              | 3.5   | EL PASO NATURAL G |
| -BOBERT OIL CO                      |        |            |           | RECEIVED: 07/15/81 JA: OK |              |       |                   |
| 8141681                             | 09779  | 3501121511 | 103       | BIRDIE L BARNES #1-35     | SOONER TREND | 420.0 | PHILLIPS PETROLEU |
| -BUNKER EXPLORATION CO              |        |            |           | RECEIVED: 07/15/81 JA: OK |              |       |                   |
| 8141688                             | 09636  | 3504520846 | 103       | WAYLAND 1-5               | WAYLAND      | 52.0  | TRANSWESTERN PIPE |
| -F C O OIL CORP                     |        |            |           | RECEIVED: 07/15/81 JA: OK |              |       |                   |
| 8141711                             | 12574  | 3507322700 | 103       | GRELLNER 1-22             | SOONER TREND | 36.5  | DALCO PETROLEUM I |
| -GULF OIL CORPORATION               |        |            |           | RECEIVED: 07/15/81 JA: OK |              |       |                   |
| 8141708                             | 10593  | 3501121522 | 102-2     | SHAFFER #1-23             | WEST OMEGA   | 40.0  | ONG WESTERN INC   |
| -HAMILTON BROTHERS OIL CO           |        |            |           | RECEIVED: 07/15/81 JA: OK |              |       |                   |
| 8141710                             | 10569  | 3509120399 | 102-2     | CUMMINGS NO 1-17          | WILDCAT      | 250.0 | UNCONTRACTED      |
| -HAZELWOOD PRODUCTION & EXPLORATION |        |            |           | RECEIVED: 07/15/81 JA: OK |              |       |                   |
| 8141684                             | 10561  | 3507122083 | 102-4     | SCHOOL LAND NO 2-36       | DILLWORTH    | 40.9  | CITIES SERVICE GA |
| -J W ALBERTSON                      |        |            |           | RECEIVED: 07/15/81 JA: OK |              |       |                   |
| 8141689                             | 09637  | 3512321196 | 103       | BAL THROP TWO WELL #1     | NORTH OF ADA | 54.0  | ARKLA GAS CO      |
| -K P EXPLORATION INC                |        |            |           | RECEIVED: 07/15/81 JA: OK |              |       |                   |
| 8141697                             | 07764  | 3513921250 | 103       | ENSTEN NO 1-28            |              | 540.0 | NATURAL GAS PIPEL |
| 8141698                             | 07765  | 3513921250 | 103       | ENSTEN NO 1-28            |              | 72.0  | NATURAL GAS PIPEL |
| 8141707                             | 07757  | 3513921179 | 103       | GARDNER NO 1-9            |              | 36.0  | NATURAL GAS PIPEL |
| 8141692                             | 07769  | 3513921251 | 103       | MOEME NO 1-1              |              | 72.0  | NATURAL GAS PIPEL |
| 8141702                             | 07758  | 3513921256 | 103       | LONG NO 1-4               |              | 540.0 | NATURAL GAS PIPEL |
| 8141703                             | 07759  | 3513921256 | 103       | LONG NO 1-4               |              | 72.0  | NATURAL GAS PIPEL |
| 8141706                             | 00995  | 3513921172 | 103       | RUDD NO 1-10              |              | 90.0  | NATURAL GAS PIPEL |
| 8141704                             | 07760  | 3513921235 | 103       | STATE NO 1-36             |              | 360.0 | NATURAL GAS PIPEL |
| 8141690                             | 07767  | 3513921271 | 103       | WACKER NO 1-27            |              | 90.0  | NATURAL GAS PIPEL |
| 8141691                             | 07768  | 3513921271 | 103       | WACKER NO 1-27            |              | 180.0 | NATURAL GAS PIPEL |
| 8141696                             | 07766  | 3513921271 | 103       | WACKER NO 1-27            |              | 90.0  | NATURAL GAS PIPEL |
| 8141699                             | 07761  | 3513921265 | 103       | WACKER NO 1-35            |              | 36.0  | NATURAL GAS PIPEL |
| 8141700                             | 07762  | 3513921265 | 103       | WACKER NO 1-35            |              | 9.0   | NATURAL GAS PIPEL |
| 8141701                             | 07763  | 3513921265 | 103       | WACKER NO 1-35            |              | 9.0   | NATURAL GAS PIPEL |
| -L & N EXPLORATION INC              |        |            |           | RECEIVED: 07/15/81 JA: OK |              |       |                   |
| 8141687                             | 09627  | 3505920979 | 103       | GIBSON #1-17              | EAST LAYERNE | 730.0 | TRANSWESTERN PIPE |
| -L G WILLIAMS OIL COMPANY INC       |        |            |           | RECEIVED: 07/15/81 JA: OK |              |       |                   |
| 8141693                             | 08007  | 3501721558 | 102-2     | ELMENHORST #33-1          | UNION CITY   | 0.0   | PHILLIPS PETROLEU |
| -LAGUNA PETROLEUM CO                |        |            |           | RECEIVED: 07/15/81 JA: OK |              |       |                   |
| 8141709                             | 10576  | 3501721794 | 102-2     | J & H ENLOW #1-10         |              | 90.0  | PHILLIPS PETROLEU |
| -RED STONE ENERGIES LTD             |        |            |           | RECEIVED: 07/15/81 JA: OK |              |       |                   |
| 8141682                             | 09780  | 3507322846 | 103       | WEHRENBURG 1-20           | SOONER TREND | 55.0  | CITIES SERVICE GA |



VOLUME 484

PAGE 002

| JD NO                                               | JA DKT | API NO     | C SEC CAT WELL NAME       | FIELD NAME               | PROD | PURCHASER                |
|-----------------------------------------------------|--------|------------|---------------------------|--------------------------|------|--------------------------|
| -SOUTHLAND ROYALTY CO                               |        |            |                           |                          |      |                          |
| 8141680                                             | 09685  | 3509321806 | RECEIVED: 07/15/81 JA: OK | ORION                    |      | 36.0 MICHIGAN WISCONSIN  |
| -TENNECO OIL COMPANY                                |        |            |                           |                          |      |                          |
| 8141694                                             | 09311  | 3501900000 | RECEIVED: 07/15/81 JA: OK | CADDO                    |      | 3.0 UNION OIL OF CALI    |
| 8141695                                             | 09312  | 3501120518 | RECEIVED: 07/15/81 JA: OK | ORION                    |      | 18.0 PUBLIC SERVICE CO   |
| -VULCAN ENERGY CORP                                 |        |            |                           |                          |      |                          |
| 8141683                                             | 09784  | 3507321994 | RECEIVED: 07/15/81 JA: OK | SOONER TREND             |      | 275.0 PHILLIPS PETROLEUM |
| -WHEATLAND OIL CO                                   |        |            |                           |                          |      |                          |
| 8141686                                             | 09549  | 3507322826 | RECEIVED: 07/15/81 JA: OK | W LACY                   |      | 219.0 PHILLIPS PETROLEUM |
| -PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL RESOURCES |        |            |                           |                          |      |                          |
| -ADCO OIL & GAS CORPORATION                         |        |            |                           |                          |      |                          |
| 8141715                                             | 8284   | 3706525916 | RECEIVED: 07/17/81 JA: PA | CLYMER                   |      | 18.0 COLUMBIA GAS TRAN   |
| 8141716                                             | 8285   | 3706525915 | RECEIVED: 07/17/81 JA: PA | CLYMER                   |      | 12.0 COLUMBIA GAS TRAN   |
| 8141713                                             | 7015   | 3712921732 | RECEIVED: 07/17/81 JA: PA | SALTSBURG                |      | 32.0 T W PHILLIPS        |
| 8141717                                             | 8286   | 3706522214 | RECEIVED: 07/17/81 JA: PA | REYNOLDSVILLE            |      | 10.0                     |
| 8141718                                             | 8287   | 3706522254 | RECEIVED: 07/17/81 JA: PA | PUNKSUTAWNEY             |      | 15.0                     |
| 8141714                                             | 8283   | 3712921328 | RECEIVED: 07/17/81 JA: PA | MT PLEASANT              |      | 13.0 UGI                 |
| -ANGARMAN ASSOCIATES INC                            |        |            |                           |                          |      |                          |
| 8141723                                             | 8094   | 3706325806 | RECEIVED: 07/17/81 JA: PA | W PA - UPPER DEVONIAN SA |      | 45.0 PEOPLES NATURAL G   |
| 8141719                                             | 7726   | 3706324164 | RECEIVED: 07/17/81 JA: PA | W PA-UPPER DEVONIAN SAND |      | 45.0 PEOPLES NATURAL G   |
| 8141721                                             | 8096   | 3706325711 | RECEIVED: 07/17/81 JA: PA | W PA-UPPER DEVONIAN SAND |      | 45.0 PEOPLES NATURAL G   |
| 8141722                                             | 8097   | 3706325786 | RECEIVED: 07/17/81 JA: PA | W PA - UPPER DEVONIAN SA |      | 45.0 PEOPLES NATURAL G   |
| 8141720                                             | 7956   | 3712921545 | RECEIVED: 07/17/81 JA: PA | W PA-UPPER DEVONIAN SAND |      | 25.0 PEOPLES NATURAL G   |
| -ATLAS RESOURCES INC                                |        |            |                           |                          |      |                          |
| 8141727                                             | 8071   | 3706325883 | RECEIVED: 07/17/81 JA: PA | GREEN                    |      | 8.0 COLUMBIA GAS TRAN    |
| 8141732                                             | 8076   | 3706325664 | RECEIVED: 07/17/81 JA: PA | GREEN                    |      | 44.0 COLUMBIA GAS TRAN   |
| 8141731                                             | 8075   | 3706325665 | RECEIVED: 07/17/81 JA: PA | GREEN                    |      | 62.0 COLUMBIA GAS TRAN   |
| 8141730                                             | 8074   | 3706325666 | RECEIVED: 07/17/81 JA: PA | GREEN                    |      | 98.0 COLUMBIA GAS TRAN   |
| 8141726                                             | 8070   | 3706325845 | RECEIVED: 07/17/81 JA: PA | GREEN                    |      | 6.0 COLUMBIA GAS TRAN    |
| 8141725                                             | 8069   | 3706325859 | RECEIVED: 07/17/81 JA: PA | GREEN                    |      | 7.0 COLUMBIA GAS TRAN    |
| 8141724                                             | 8068   | 3706325860 | RECEIVED: 07/17/81 JA: PA | GREEN                    |      | 7.0 COLUMBIA GAS TRAN    |
| 8141734                                             | 8078   | 3706325892 | RECEIVED: 07/17/81 JA: PA | GREEN                    |      | 34.0 COLUMBIA GAS TRAN   |
| 8141738                                             | 8083   | 3706325847 | RECEIVED: 07/17/81 JA: PA | GREEN                    |      | 9.0 COLUMBIA GAS TRAN    |
| 8141736                                             | 8081   | 3706325909 | RECEIVED: 07/17/81 JA: PA | GREEN                    |      | 10.0 COLUMBIA GAS TRAN   |
| 8141733                                             | 8077   | 3706325639 | RECEIVED: 07/17/81 JA: PA | GREEN                    |      | 14.0 COLUMBIA GAS TRAN   |
| 8141735                                             | 8080   | 3706325641 | RECEIVED: 07/17/81 JA: PA | GREEN                    |      | 6.0 COLUMBIA GAS TRAN    |
| 8141729                                             | 8073   | 3706325904 | RECEIVED: 07/17/81 JA: PA | GREEN                    |      | 3.0 COLUMBIA GAS TRAN    |
| 8141728                                             | 8072   | 3706325669 | RECEIVED: 07/17/81 JA: PA | GREEN                    |      | 35.0 COLUMBIA GAS TRAN   |
| 8141737                                             | 8082   | 3706325674 | RECEIVED: 07/17/81 JA: PA | GREEN                    |      | 23.0 COLUMBIA GAS TRAN   |
| -CAROT OIL & GAS CORP                               |        |            |                           |                          |      |                          |
| 8141740                                             | 8057   | 3708520214 | RECEIVED: 07/17/81 JA: PA | FRENCH CREEK             |      | 50.0 TENNESSEE GAS PIP   |
| 8141739                                             | 7840   | 3708520215 | RECEIVED: 07/17/81 JA: PA | FRENCH CREEK             |      | 50.0 TENNESSEE GAS PIP   |
| -CONSOLIDATED GAS SUPPLY CORPORATION                |        |            |                           |                          |      |                          |
| 8141748                                             | 8205   | 3703320954 | RECEIVED: 07/17/81 JA: PA | BRADY                    |      | 11.9 GENERAL SYSTEM PU   |
| 8141752                                             | 8209   | 3706522866 | RECEIVED: 07/17/81 JA: PA | HENDERSON                |      | 12.1 GENERAL SYSTEM PU   |
| 8141757                                             | 8214   | 370328819  | RECEIVED: 07/17/81 JA: PA | HIGHLAND TOWNSHIP        |      | 21.9 GENERAL SYSTEM PU   |
| 8141765                                             | 7289   | 3706521141 | RECEIVED: 07/17/81 JA: PA | BANKS                    |      | 40.2 GENERAL SYSTEM PU   |
| 8141753                                             | 8210   | 370321002  | RECEIVED: 07/17/81 JA: PA | WINSLOW TOWNSHIP         |      | 2.3 GENERAL SYSTEM PU    |
| 8141756                                             | 8213   | 370321002  | RECEIVED: 07/17/81 JA: PA | BRADY                    |      | 7.6 GENERAL SYSTEM PU    |
| 8141754                                             | 8211   | 3706522141 | RECEIVED: 07/17/81 JA: PA | BRADY TOWNSHIP           |      | 4.6 GENERAL SYSTEM PU    |
|                                                     |        |            |                           | MCCALPONT                |      | 6.9 GENERAL SYSTEM PU    |



| JD NO                                | JA DKT | API NO     | C SEC | CAT | WELL NAME                           | FIELD NAME               | PROD  | PURCHASER         |
|--------------------------------------|--------|------------|-------|-----|-------------------------------------|--------------------------|-------|-------------------|
| 8141747                              | 8204   | 3703320950 | 103   |     | FRANCE REFRACATORIES CO INC WN-1800 | BLOOM                    | 3.8   | GENERAL SYSTEM PU |
| 8141763                              | 5822   | 3706323761 | 108   |     | GENO J CRIVELLI WN-1607             | BIG RUN-ROCHESTER MILLS  | 21.0  | GENERAL SYSTEM PU |
| 8141767                              | 6156   | 3712921857 | 108   |     | GRACE M EISAMAN WN-1630             | HEMPFIELD TOWNSHIP       | 5.1   | GENERAL SYSTEM PU |
| 8141746                              | 8203   | 3703320965 | 103   |     | HARRY F SHELLBERG WN-1799           | BRADY                    | 5.8   | GENERAL SYSTEM PU |
| 8141758                              | 8215   | 3703320975 | 103   |     | J M FRANCE REFRACATORIES WN-1815    | PIKE                     | 8.4   | GENERAL SYSTEM PU |
| 8141764                              | 6996   | 3703320881 | 108   |     | J M FRANCE REFRACATORIES WN-1753    | BLOOM TOWNSHIP           | 16.3  | GENERAL SYSTEM PU |
| 8141741                              | 8198   | 3706325593 | 103   |     | J P MOTTORN WN-1649                 | NORTH MAHONING           | 10.0  | GENERAL SYSTEM PU |
| 8141749                              | 8206   | 3706325592 | 103   |     | J P MOTTORN WN-1802                 | NORTH MAHONING TOWNSHIP  | 58.1  | GENERAL SYSTEM PU |
| 8141755                              | 8212   | 3703320877 | 103   |     | JAMES A SONANTE ET AL WN-1809       | BELL TOWNSHIP            | 1.5   | GENERAL SYSTEM PU |
| 8141761                              | 8218   | 3703321041 | 102-2 |     | JOSEPH D TONKIN WN-1833             | BURNSIDE                 | 6.4   | GENERAL SYSTEM PU |
| 8141762                              | 8219   | 3703321041 | 103   |     | JOSEPH D TONKIN WN-1833             | BURNSIDE                 | 6.4   | GENERAL SYSTEM PU |
| 8141743                              | 8200   | 3712921701 | 103   |     | K B SNYDER WN-1793                  | HEMPFIELD TOWNSHIP       | 15.0  | GENERAL SYSTEM PU |
| 8141751                              | 8208   | 3703320957 | 103   |     | PAUL J GREGORY ET UX WN-1805        | GRADY TOWNSHIP           | 14.2  | GENERAL SYSTEM PU |
| 8141750                              | 8207   | 3703320969 | 103   |     | RAYMOND NELSON WN-1803              | GRADY TOWNSHIP           | 6.8   | GENERAL SYSTEM PU |
| 8141760                              | 8217   | 3703321015 | 103   |     | REED REITER WN-1824                 | GRADY TOWNSHIP           | 3.0   | GENERAL SYSTEM PU |
| 8141759                              | 8216   | 3703320971 | 103   |     | ROBERT A MILLS WN-1816              | BELL                     | 8.7   | GENERAL SYSTEM PU |
| 8141744                              | 8201   | 3702120085 | 103   |     | ROY D LEAHER WN-1794                | SUSQUEHANNA TOWNSHIP     | 4.5   | GENERAL SYSTEM PU |
| 8141745                              | 8202   | 3706325611 | 103   |     | W A SCHROTH WN-1798                 | GREEN                    | 12.9  | GENERAL SYSTEM PU |
| 8141766                              | 8192   | 3706521142 | 108   |     | WARD B KOUGHNER WN-1411             | WINSLOW TOWNSHIP         | 0.6   | GENERAL SYSTEM PU |
| -DANSON-LOUDEN CO LTD & MCC-LOUDEM L |        |            |       |     | RECEIVED: 07/17/81 JA: PA           |                          |       |                   |
| 8141768                              | 8191   | 3712500000 | 108   |     | JEHU DUNLEVY HEIRS 670-1            | DONLEVY BOROUGH          | 5.9   | COLUMBIA GAS TRAN |
| -DAVID GAON AND SPENCER STILLMAN     |        |            |       |     | RECEIVED: 07/17/81 JA: PA           |                          |       |                   |
| 8141778                              | 8189   | 3708520285 | 102-2 |     | BIELOBOCKY #1                       | WEST SALEM               | 60.0  |                   |
| 8141779                              | 8188   | 3708520205 | 103   |     | BIELOBOCKY #1                       | WEST SALEM               | 60.0  |                   |
| -CARL M RICHARDS                     |        |            |       |     | RECEIVED: 07/17/81 JA: PA           |                          |       |                   |
| 8141828                              | 8233   | 3700520423 | 108   |     | FLEMING #2                          | DUTCH RUN                | 7.0   | PEOPLES NATURAL G |
| 8141829                              | 8234   | 3708520358 | 108   |     | FLEMING #1                          | DUTCH RUN                | 7.0   | PEOPLES NATURAL G |
| 8141827                              | 8232   | 3708520893 | 108   |     | FLEMING #3                          | DUTCH RUN                | 14.0  | PEOPLES NATURAL G |
| -ENDEAVOR VENTURES                   |        |            |       |     | RECEIVED: 07/17/81 JA: PA           |                          |       |                   |
| 8141771                              | 6360   | 3705322650 | 108   |     | EV 1979-17                          | QUEEN SAND GLADE FORMATI | 5.0   | NATIONAL FUEL GAS |
| 8141772                              | 6361   | 3705322651 | 108   |     | EV 1979-18                          | QUEEN SAND GLADE FORMATI | 5.0   | NATIONAL FUEL GAS |
| 8141770                              | 6359   | 3705322652 | 108   |     | EV 1979-19                          | QUEEN SAND GLADE FORMATI | 5.0   | NATIONAL FUEL GAS |
| 8141769                              | 6358   | 3705322653 | 108   |     | EV 1979-20                          | QUEEN SAND GLADE FORMATI | 5.0   | NATIONAL FUEL GAS |
| 8141774                              | 6363   | 3705322654 | 108   |     | EV 1979-21                          | QUEEN SAND GLADE FORMATI | 5.0   | NATIONAL FUEL GAS |
| 8141773                              | 6362   | 3705322655 | 108   |     | EV 1979-22                          | QUEEN SAND GLADE FORMATI | 5.0   | NATIONAL FUEL GAS |
| -ENVIROGAS INC                       |        |            |       |     | RECEIVED: 07/17/81 JA: PA           |                          |       |                   |
| 8141775                              | 8221   | 3704920644 | 103   |     | RODICAL #1                          | NORTH EAST DEEP          | 18.0  | NATIONAL FUEL GAS |
| -FAIRMAN DRILLING CO                 |        |            |       |     | RECEIVED: 07/17/81 JA: PA           |                          |       |                   |
| 8141777                              | 8047   | 3706324145 | 108   |     | FRED A MUSSEY ETAL TRUS #1          | CREEKSIDE                | 8.0   | PEOPLES NATURAL G |
| 8141776                              | 8046   | 3706324146 | 108   |     | FRED A MUSSEY ETAL TRUS #2          | CREEKSIDE                | 8.0   | PEOPLES NATURAL G |
| -FLOYD A GEARHART AND STANLEY K ODEL |        |            |       |     | RECEIVED: 07/17/81 JA: PA           |                          |       |                   |
| 8141712                              | 6787   | 3703120864 | 102-2 |     | DONALD MINICH #2                    | LICKING TOWNSHIP         | 127.8 | COLUMBIA GAS OF P |
| -J & J ENTERPRISES INC               |        |            |       |     | RECEIVED: 07/17/81 JA: PA           |                          |       |                   |
| 8141784                              | 7191   | 3706323650 | 103   |     | ARTHUR L WEISS #2                   | YOUNG                    | 200.0 | T W PHILLIPS GAS  |
| 8141780                              | 7024   | 3706324946 | 103   |     | ERNEST C FOWLER #2                  | WHITE                    | 200.0 | PEOPLES NATURAL G |
| 8141787                              | 6395   | 3706324792 | 108   |     | FRED A MUSSEY #1 (120A)             | MONTGOMERY               | 24.0  | CONSOLIDATED GAS  |
| 8141786                              | 6394   | 3706324823 | 108   |     | FRED A MUSSEY #2 (61A)              | MONTGOMERY               | 23.3  | CONSOLIDATED GAS  |
| 8141788                              | 6396   | 3706324824 | 108   |     | FRED A MUSSEY #3 (61A)              | MONTGOMERY               | 23.3  | CONSOLIDATED GAS  |
| 8141783                              | 7169   | 3706324061 | 0     |     | J B DUNLAP #2 (52A)                 | CANCE                    | 200.0 | T W PHILLIPS GAS  |
| 8141782                              | 7167   | 3706324331 | 0     |     | LOUIS J MANFREDO #1                 | CANCE                    | 200.0 | T W PHILLIPS GAS  |
| 8141781                              | 7139   | 3706325148 | 0     |     | ORVILLE WATSON #2                   | CENTER                   | 200.0 | T W PHILLIPS GAS  |
| 8141789                              | 6397   | 3703320902 | 108   |     | RAYMOND BARRETT #1                  | BURNSIDE                 | 41.2  | CONSOLIDATED GAS  |
| 8141785                              | 6307   | 3706324557 | 108   |     | WILLIAM OERLIN #1 (12A)             | GRANT                    | 13.6  | CONSOLIDATED GAS  |



PAGE 004

VOLUME 484

| JO NO                             | JA OKT | API NO     | D SEC CAT | WELL NAME                   | RECEIVED: 07/17/81 | JA: PA | FIELD NAME        | PROD  | PURCHASER         |
|-----------------------------------|--------|------------|-----------|-----------------------------|--------------------|--------|-------------------|-------|-------------------|
| <b>-KEYSTONE ENERGY RESOURCES</b> |        |            |           |                             |                    |        |                   |       |                   |
| 8141791                           | 8111   | 3706325629 | 103       | ADAMCHICK #5                | RECEIVED: 07/17/81 | JA: PA | CHARLES ADAMCHICK | 36.5  | COLUMBIA GAS TRAN |
| 8141790                           | 8109   | 3706325965 | 103       | JOHNSTON #1                 |                    |        | RUSSELL JOHNSTON  | 55.2  | COLUMBIA GAS TRAN |
| 8141794                           | 8114   | 3706325966 | 103       | JOHNSTON #2                 |                    |        | RUSSELL JOHNSTON  | 57.6  | COLUMBIA GAS TRAN |
| 8141793                           | 8113   | 3706325967 | 103       | JOHNSTON #3                 |                    |        | RUSSELL JOHNSTON  | 48.4  | COLUMBIA GAS TRAN |
| 8141792                           | 8112   | 3706326197 | 103       | JOHNSTON #4                 |                    |        | RUSSELL JOHNSTON  | 46.5  | COLUMBIA GAS TRAN |
| <b>-MID-EAST OIL CO</b>           |        |            |           |                             |                    |        |                   |       |                   |
| 8141823                           | 2595   | 3706323583 | 108       | JAMES AND FRANK CAMPBELL #7 | RECEIVED: 07/17/81 | JA: PA | BRUSH VALLEY      | 7.5   | NATIONAL FUEL GAS |
| <b>-MUNNA OIL PRODUCTION CO</b>   |        |            |           |                             |                    |        |                   |       |                   |
| 8141825                           | 8222   | 3700521418 | 108       | KENNETH BRICE #1            | RECEIVED: 07/17/81 | JA: PA | DAYTON            | 6.7   | PEOPLES NATURAL G |
| <b>-P &amp; G EXPLORATION INC</b> |        |            |           |                             |                    |        |                   |       |                   |
| 8141826                           | 8187   | 3706325809 | 103       | CLARENCE MARCUS IND-25809   | RECEIVED: 07/17/81 | JA: PA | WHITE             | 24.0  | COLUMBIA GAS TRAN |
| <b>-RENO L MOSIER JR</b>          |        |            |           |                             |                    |        |                   |       |                   |
| 8141824                           | 2912   | 3705100000 | 108       | KNIGHT #1                   | RECEIVED: 07/17/81 | JA: PA | FRANKLIN          | 2.7   | COLUMBIA GAS TRAN |
| <b>-RICHARD A SMITH</b>           |        |            |           |                             |                    |        |                   |       |                   |
| 8141833                           | 8226   | 3700520285 | 108       | ANDREW HECKMAN #1           | RECEIVED: 07/17/81 | JA: PA | BURRELL           | 3.1   | PEOPLES NATURAL G |
| 8141831                           | 8224   | 3712920328 | 108       | BONO #1                     |                    |        | GREENSBURG        | 8.3   | PEOPLES NATURAL G |
| 8141830                           | 8223   | 3712920284 | 108       | DAVID MILLER #1             |                    |        | GREENSBURG        | 14.1  | PEOPLES NATURAL G |
| 8141832                           | 8225   | 3712920350 | 108       | FRED HEEGHAN #1             |                    |        | GREENSBURG        | 7.0   | PEOPLES NATURAL G |
| 8141834                           | 8227   | 3712920376 | 108       | PAUL TEICHERT #1            |                    |        | BURRELL           | 11.1  | PEOPLES NATURAL G |
| 8141835                           | 8228   | 3712920352 | 108       | TONY SHARNICK #1            |                    |        | GREENSBURG        | 4.0   | PEOPLES NATURAL G |
| 8141836                           | 8229   | 3712920397 | 108       | WILSON MORRIS #1            |                    |        | GREENSBURG        | 5.8   | PEOPLES NATURAL G |
| <b>-RONALD MAXSON</b>             |        |            |           |                             |                    |        |                   |       |                   |
| 8141795                           | 8159   | 3710500000 | 108       | MAXSON GAS CO #44           | RECEIVED: 07/17/81 | JA: PA | OSWAYO            | 390.7 | NATIONAL FUEL GAS |
| 8141796                           | 8160   | 3710500000 | 108       | MAXSON GAS CO #45           |                    |        | OSWAYO            | 390.7 | NATIONAL FUEL GAS |
| 8141797                           | 8161   | 3710500000 | 108       | MAXSON GAS CO #46           |                    |        | OSWAYO            | 390.7 | NATIONAL FUEL GAS |
| 8141798                           | 8162   | 3710500000 | 108       | MAXSON GAS CO #47           |                    |        | OSWAYO            | 390.7 | NATIONAL FUEL GAS |
| 8141799                           | 8163   | 3710500000 | 108       | MAXSON GAS CO #48           |                    |        | OSWAYO            | 390.7 | NATIONAL FUEL GAS |
| 8141800                           | 8164   | 3710500000 | 108       | MAXSON GAS CO #49           |                    |        | OSWAYO            | 390.7 | NATIONAL FUEL GAS |
| 8141801                           | 8165   | 3710500000 | 108       | MAXSON GAS CO #50           |                    |        | SHARON            | 390.7 | NATIONAL FUEL GAS |
| 8141802                           | 8166   | 3710500000 | 108       | MAXSON GAS CO #51           |                    |        | SHARON            | 390.7 | NATIONAL FUEL GAS |
| 8141803                           | 8167   | 3710500000 | 108       | MAXSON GAS CO #52           |                    |        | SHARON            | 390.7 | NATIONAL FUEL GAS |
| 8141804                           | 8168   | 3710500000 | 108       | MAXSON GAS CO #53           |                    |        | SHARON            | 0.0   | NATIONAL FUEL GAS |
| 8141805                           | 8169   | 3710500000 | 108       | MAXSON GAS CO #54           |                    |        | SHARON            | 390.7 | NATIONAL FUEL GAS |
| 8141806                           | 8170   | 3710500000 | 108       | MAXSON GAS CO #55           |                    |        | SHARON            | 390.7 | NATIONAL FUEL GAS |
| 8141807                           | 8171   | 3710500000 | 108       | MAXSON GAS CO #56           |                    |        | SHARON            | 390.7 | NATIONAL FUEL GAS |
| 8141808                           | 8172   | 3710500000 | 108       | MAXSON GAS CO #57           |                    |        | SHARON            | 390.7 | NATIONAL FUEL GAS |
| 8141809                           | 8173   | 3710500000 | 108       | MAXSON GAS CO #58           |                    |        | SHARON            | 390.7 | NATIONAL FUEL GAS |
| 8141810                           | 8174   | 3710500000 | 108       | MAXSON GAS CO #59           |                    |        | SHARON            | 390.7 | NATIONAL FUEL GAS |
| 8141811                           | 8175   | 3710500000 | 108       | MAXSON GAS CO #60           |                    |        | SHARON            | 390.7 | NATIONAL FUEL GAS |
| 8141812                           | 8176   | 3710500000 | 108       | MAXSON GAS CO #61           |                    |        | SHARON            | 390.7 | NATIONAL FUEL GAS |
| 8141813                           | 8177   | 3710500000 | 108       | MAXSON GAS CO #62           |                    |        | SHARON            | 390.7 | NATIONAL FUEL GAS |
| 8141814                           | 8178   | 3710500000 | 108       | MAXSON GAS CO #63           |                    |        | OSWAYO            | 390.7 | NATIONAL FUEL GAS |
| 8141821                           | 8185   | 3710500000 | 108       | MAXSON GAS CO #65           |                    |        | OSWAYO            | 390.7 | NATIONAL FUEL GAS |
| 8141820                           | 8184   | 3710500000 | 108       | MAXSON GAS CO #70           |                    |        | SHARON            | 390.7 | NATIONAL FUEL GAS |
| 8141822                           | 8186   | 3710500000 | 108       | MAXSON GAS CO #71           |                    |        | SHARON            | 0.0   | NATIONAL FUEL GAS |
| 8141815                           | 8179   | 3710500000 | 108       | ROY #64                     |                    |        | OSWAYO (OSWAYO)   | 390.7 | NATIONAL FUEL GAS |
| 8141816                           | 8180   | 3710500000 | 108       | ROY #65                     |                    |        | OSWAYO            | 390.7 | NATIONAL FUEL GAS |
| 8141817                           | 8181   | 3710500000 | 108       | ROY #66                     |                    |        | OSWAYO            | 390.9 | NATIONAL FUEL GAS |
| 8141818                           | 8182   | 3710500000 | 108       | ROY #67                     |                    |        | OSWAYO            | 390.7 | NATIONAL FUEL GAS |
| 8141819                           | 8183   | 3710500000 | 108       | ROY #68                     |                    |        | OSWAYO            | 390.7 | NATIONAL FUEL GAS |

WEST VIRGINIA DEPARTMENT OF MINES

-ALLEGHENY &amp; WESTERN ENERGY CORP

RECEIVED: 07/14/81 JA: WY



PAGE 005

VOLUME 484

| JO NO                             | JA DKT | API NO     | D SEC CAT | WELL NAME                       | FIELD NAME         | PROD | PURCHASER         |
|-----------------------------------|--------|------------|-----------|---------------------------------|--------------------|------|-------------------|
| 8141591                           |        | 4703501535 | 103       | JOHN J PFOST # 6R               | WASHINGTON         | 10.0 | COLUMBIA GAS TRAN |
| -ALLEGHENY LAND & MINERAL COMPANY |        | 4701702309 | 108       | RECEIVED: 07/14/81 JA: WV       |                    |      |                   |
| 8141669                           |        | 4701702309 | 108       | A-690                           | SOUTHWEST DISTRICT | 0.0  | CONSOLIDATED GAS  |
| -BEREA OIL AND GAS CORPORATION    |        | 4700121404 | 103       | RECEIVED: 07/14/81 JA: WV       |                    |      |                   |
| 8141579                           |        | 4700121404 | 103       | A HILL #1                       | BARKER             | 13.8 | CONSOLIDATED GAS  |
| 8141571                           |        | 4700121373 | 103       | KARL SCHAFER #1                 | BARKER             | 15.5 | CONSOLIDATED GAS  |
| 8141570                           |        | 4700121388 | 103       | R DAVIS #1                      | BARKER             | 16.8 | CONSOLIDATED GAS  |
| -BLUE CREEK GAS COMPANY           |        | 4701501790 | 103       | RECEIVED: 07/14/81 JA: WV       |                    |      |                   |
| 8141684                           |        | 4701501790 | 103       | COVE HOLLOW #1                  | HENRY              | 0.0  | COLUMBIA GAS TRAN |
| 8141686                           |        | 4701501791 | 103       | COVE HOLLOW #2                  | HENRY              | 0.0  | COLUMBIA GAS TRAN |
| 8141607                           |        | 4703903655 | 103       | KAN 8001                        | ELK                | 0.0  | COLUMBIA GAS TRAN |
| 8141609                           |        | 4703903666 | 103       | KAN 8002                        | ELK                | 0.0  | COLUMBIA GAS TRAN |
| 8141587                           |        | 4703903654 | 103       | KAN 8003                        | ELK                | 0.0  | COLUMBIA GAS TRAN |
| 8141588                           |        | 4703903655 | 103       | KAN 8004                        | ELK                | 0.0  | COLUMBIA GAS TRAN |
| -CABOT OIL & GAS CORP             |        | 4707900983 | 107-DV    | RECEIVED: 07/14/81 JA: WV       |                    |      |                   |
| 8141590                           |        | 4707900983 | 107-DV    | J L MCLEAN A-46                 | UNION              | 7.5  | TENNESSEE GAS PIP |
| 8141595                           |        | 4700501312 | 103       | LITTLE COAL C-1                 | WASHINGTON         | 26.5 | TENNESSEE GAS PIP |
| 8141593                           |        | 4700501333 | 103       | LITTLE COAL C-2                 | WASHINGTON         | 27.5 | TENNESSEE GAS PIP |
| 8141594                           |        | 4700501328 | 103       | LITTLE COAL C-3                 | WASHINGTON         | 33.7 | TENNESSEE GAS PIP |
| 8141568                           |        | 4707900997 | 107-DV    | PUTNAM B-14                     | UNION              | 24.7 | TENNESSEE GAS PIP |
| -CARSON PETROLEUM CORP            |        | 4701702638 | 107-DV    | BROOKS-GUM NO 1-A               | ST CLAIR           | 25.0 | COLUMBIA GAS TRAN |
| 8141639                           |        | 4701702638 | 107-DV    | COLE NO 1                       | ST CLAIR           | 0.0  | COLUMBIA GAS TRAN |
| 8141627                           |        | 4701702452 | 107-DV    | COLE NO 2                       | ST CLAIR           | 20.0 | COLUMBIA GAS TRAN |
| 8141632                           |        | 4701702752 | 107-DV    | COX-GAIN NO 1-A                 | ST CLAIR           | 20.0 | COLUMBIA GAS TRAN |
| 8141618                           |        | 4701702453 | 107-DV    | DROPPLEMAN NO 2                 | ST CLAIR           | 15.0 | COLUMBIA GAS TRAN |
| 8141633                           |        | 4701702751 | 107-DV    | EARL GUM NO 1                   | ST CLAIR           | 10.0 | COLUMBIA GAS TRAN |
| 8141617                           |        | 4701702360 | 107-DV    | FENCE BROWN NO 1-A              | ST CLAIR           | 0.0  | COLUMBIA GAS TRAN |
| 8141626                           |        | 4701702365 | 107-DV    | FENCE BROWN NO 2-A              | ST CLAIR           | 48.0 | COLUMBIA GAS TRAN |
| 8141628                           |        | 4701702373 | 107-DV    | FENCE BROWN NO 3-A              | ST CLAIR           | 36.0 | COLUMBIA GAS TRAN |
| 8141630                           |        | 4701702450 | 107-DV    | FENCE BROWN NO 4-A              | ST CLAIR           | 30.0 | COLUMBIA GAS TRAN |
| 8141631                           |        | 4701702331 | 107-DV    | GLENN SCHMIDT NO 1 (SCHMIDT #1) | SAINT CLAIR        | 0.0  | COLUMBIA GAS TRAN |
| 8141625                           |        | 4701702302 | 107-DV    | HAUGHT NO 1                     | BRUSHY FORK        | 6.0  | COLUMBIA GAS TRAN |
| 8141623                           |        | 4704102859 | 107-DV    | JOE BROWN NO 1                  | ST CLAIR           | 45.0 | COLUMBIA GAS TRAN |
| 8141620                           |        | 4701702494 | 107-DV    | JOE BROWN NO 2                  | ST CLAIR           | 40.0 | COLUMBIA GAS TRAN |
| 8141636                           |        | 4701702502 | 107-DV    | JOE BROWN NO 3                  | ST CLAIR           | 35.0 | COLUMBIA GAS TRAN |
| 8141637                           |        | 4701702822 | 107-DV    | JOHN GUM NO 1                   | ST CLAIR           | 15.0 | COLUMBIA GAS TRAN |
| 8141619                           |        | 4701702372 | 107-DV    | ROY SCHMIDT NO 2 (SCHMIDT #2)   | ST CLAIR           | 40.0 | COLUMBIA GAS TRAN |
| 8141629                           |        | 4701702455 | 107-DV    | ROY SCHMIDT NO 3 (SCHMIDT #3)   | ST CLAIR           | 20.0 | COLUMBIA GAS TRAN |
| 8141635                           |        | 4701702454 | 107-DV    | ROY SCHMIDT NO 4 (SCHMIDT #4)   | ST CLAIR           | 30.0 | COLUMBIA GAS TRAN |
| 8141634                           |        | 4701702705 | 107-DV    | SHULTE NO 1                     | ST CLAIR           | 0.0  | COLUMBIA GAS TRAN |
| 8141611                           |        | 4701702707 | 107-DV    | SHULTE NO 4                     | ST CLAIR           | 20.0 | COLUMBIA GAS TRAN |
| 8141612                           |        | 4701702375 | 107-DV    | SMITH NO 1-A                    | ST CLAIR           | 20.0 | COLUMBIA GAS TRAN |
| 8141621                           |        | 4701702577 | 107-DV    | SMITH NO 2-A                    | ST CLAIR           | 15.0 | COLUMBIA GAS TRAN |
| 8141638                           |        | 4701702503 | 107-DV    | WEBBER NO 1                     | TOMS FORK          | 8.0  | COLUMBIA GAS TRAN |
| 8141624                           |        | 4704102742 | 107-DV    | X FRYE NO 1                     | BUCK RUN           | 25.0 | COLUMBIA GAS TRAN |
| 8141614                           |        | 4704102741 | 107-DV    | X FRYE NO 2                     | BUCK RUN           | 30.0 | COLUMBIA GAS TRAN |
| 8141613                           |        | 4704102746 | 107-DV    | X FRYE NO 3                     | BUCK RUN           | 25.0 | COLUMBIA GAS TRAN |
| 8141615                           |        | 4704102747 | 107-DV    | X FRYE NO 4                     | BUCK RUN           | 30.0 | COLUMBIA GAS TRAN |
| 8141616                           |        | 4704102931 | 103       | RECEIVED: 07/14/81 JA: WV       |                    |      |                   |
| -CHASE PETROLEUM                  |        | 4705900912 | 108       | BARNES #1                       | VANDALIA           | 10.0 |                   |
| 8141597                           |        | 4705900912 | 108       | RECEIVED: 07/14/81 JA: WV       |                    |      |                   |
| -COLUMBIA GAS TRANSMISSION CORP   |        |            |           | COTIGO DEVELOPMENT 820565       | W VA FIELD AREA B  | 19.0 | COLUMBIA GAS TRAN |
| 8141645                           |        |            |           |                                 |                    |      |                   |



PAGE 006

VOLUME 484

| JO NO                                | JA DKT | APT NO     | D SEC CAT WELL NAME               | FIELD NAME               | PHCD | PURCHASER         |
|--------------------------------------|--------|------------|-----------------------------------|--------------------------|------|-------------------|
| 8141654                              |        | 4709901613 | 108 GLEN HAYES CO 820570          | W VA FIELD AREA B        | 28.0 | COLUMBIA GAS TRAN |
| 8141653                              |        | 4709901614 | 108 GLEN HAYES CO 820571          | W VA FIELD AREA B        | 28.0 | COLUMBIA GAS TRAN |
| 8141651                              |        | 4709901610 | 108 GLENHAYES COMPANY 820576      | W VA FIELD AREA B        | 35.0 | COLUMBIA GAS TRAN |
| 8141644                              |        | 4705500076 | 108 J T MCCREERY CO INC 820593    | FIELD OREC C             | 0.0  | COLUMBIA GAS TRAN |
| 8141647                              |        | 4708100481 | 108 MCCREERY COIL CO 820041       | WVA FIELD AREA C         | 28.0 | COLUMBIA GAS TRAN |
| 8141679                              |        | 4704700507 | 108 POCAHONTAS LAND CORP 809631   | FIELD AREA C             | 14.4 | COLUMBIA GAS TRAN |
| 8141599                              |        | 4709901621 | 108 TCO MINERAL TRACT NO 1 820574 | W VA FIELD AREA B        | 28.0 | COLUMBIA GAS TRAN |
| 8141652                              |        | 4709901616 | 108 TCO MINERAL TRACT NO 1 820575 | W VA FIELD AREA B        | 28.0 | COLUMBIA GAS TRAN |
| 8141678                              |        | 4704301218 | 108 TCO MINERAL TRACT NO 7 808456 | WEST VIRGINIA FIELD AREA | 23.2 | COLUMBIA GAS TRAN |
| -D G HANEY INC                       |        |            | RECEIVED: 07/14/81 JA: WV         |                          |      |                   |
| 8141583                              |        | 4700101226 | 103 BARBARA SELLS (B-1581)        | PLEASANT DISTRICT        | 16.5 | CONSOLIDATED GAS  |
| 8141599                              |        | 4700101225 | 103 E C ZUMBUNNEN (B-1584)        | PLEASANT DISTRICT        | 50.0 | CONSOLIDATED GAS  |
| 8141580                              |        | 4700101248 | 103 GILLESPIE MAYLE               | CLENTOWN                 | 40.0 | CONSOLIDATED GAS  |
| 8141582                              |        | 4700101247 | 103 GILLESPIE MAYLE ET AL #1      | CLENTOWN                 | 40.0 | CONSOLIDATED GAS  |
| 8141573                              |        | 4700101252 | 103 HARLEY MAYLE (B-1586)         | PLEASANT DISTRICT        | 20.9 | CONSOLIDATED GAS  |
| 8141600                              |        | 4700101238 | 103 MITCHELL MAYLE                | CLENTOWN                 | 18.7 | CONSOLIDATED GAS  |
| 8141581                              |        | 4700101239 | 103 MITCHELL MAYLE #2             | CLENTOWN                 | 9.6  | CONSOLIDATED GAS  |
| 8141601                              |        | 4700101227 | 103 VERSEL MAYLE (B-1589)         | PLEASANT DISTRICT        | 0.0  | CONSOLIDATED GAS  |
| 8141602                              |        | 4700101244 | 103 VIOLA MAYLE (B-1582)          | PLEASANT DISTRICT        | 0.0  | CONSOLIDATED GAS  |
| -DORAN & ASSOCIATES INC              |        |            | RECEIVED: 07/14/81 JA: WV         |                          |      |                   |
| 8141595                              |        | 4703322242 | 103 D ROGERS K2 9                 | EAGLE                    | 30.0 | CONSOLIDATED GAS  |
| 8141578                              |        | 4703322243 | 103 M STEPHENSON #1 K-2-10        | EAGLE                    | 30.0 | CONSOLIDATED GAS  |
| -FOX DRILLING CO INC                 |        |            | RECEIVED: 07/14/81 JA: WV         |                          |      |                   |
| 8141622                              |        | 4700101423 | 107-DV BURNER #1                  | BELINGTON FIELD          | 15.0 | COLUMBIA GAS TRAN |
| -FRANKLIN ADKINS                     |        |            | RECEIVED: 07/14/81 JA: WV         |                          |      |                   |
| 8141598                              |        | 4701120560 | 107-DV T CREMEANS #1              | MCCOMAS DISTRICT         | 4.8  | COLUMBIA GAS TRAN |
| 8141610                              |        | 4704321618 | 107-DV T CREMEANS #1              | SHERIDAN DISTRICT        | 4.8  | COLUMBIA GAS TRAN |
| -GENE STALNAKER INC                  |        |            | RECEIVED: 07/14/81 JA: WV         |                          |      |                   |
| 8141663                              |        | 4702103027 | 108 C WILSON #2                   | BURNSVILLE FIELD         | 21.9 | EQUITABLE GAS CO  |
| 8141657                              |        | 4702103005 | 108 CARSON #2                     | CARSON                   | 21.0 | EQUITABLE GAS CO  |
| 8141657                              |        | 4702103212 | 108 D M BARTON #1                 | GLENVILLE                | 21.9 | CARNEGIE NATURAL  |
| 8141658                              |        | 4702103200 | 108 D STALNAKER #2                | GLENVILLE FIELD          | 21.0 | CARNEGIE NATURAL  |
| 8141665                              |        | 4702103008 | 108 D STALNAKER HEIRS #1          | GLENVILLE                | 23.0 | CARNEGIE NATURAL  |
| 8141661                              |        | 4702103031 | 108 G RHODES #1                   | GLENVILLE                | 21.9 | CARNEGIE NATURAL  |
| 8141660                              |        | 4702103032 | 108 G RHODES #2                   | GLENVILLE FIELD          | 21.9 | CARNEGIE NATURAL  |
| 8141662                              |        | 4702103028 | 108 HAYS #2 B-10-2                | BURNSVILLE FIELD         | 21.0 | EQUITABLE GAS CO  |
| 8141608                              |        | 4702103033 | 108 J R MESSENGER #1              | BURNSVILLE FIELD         | 36.0 | CONSOLIDATED GAS  |
| 8141666                              |        | 4702103006 | 108 J RHODES #1                   | J RHODES                 | 25.0 | CARNEGIE NATURAL  |
| 8141655                              |        | 4702103217 | 108 JOHN KILLINGSWORTH #1         | GLENVILLE FIELD          | 21.9 | EQUITABLE GAS CO  |
| 8141674                              |        | 4702103226 | 108 JOHN KILLINGSWORTH #2         | GLENVILLE FIELD          | 24.0 | EQUITABLE GAS CO  |
| 8141675                              |        | 4702103232 | 108 JOHN KILLINGSWORTH E-23-#3    | GLENVILLE FIELD          | 21.9 | EQUITABLE GAS CO  |
| 8141676                              |        | 4702103234 | 108 JOHN KILLINGSWORTH B-24-#4    | GLENVILLE FIELD          | 21.9 | EQUITABLE GAS CO  |
| 8141677                              |        | 4702103235 | 108 JOHN KILLINGSWORTH B-25-5     | GLENVILLE FIELD          | 21.9 | EQUITABLE GAS CO  |
| 8141659                              |        | 4702103040 | 108 K E FISHER #1                 | GLENVILLE FIELD          | 21.9 | CARNEGIE NATURAL  |
| 8141656                              |        | 4702103216 | 108 O C DAVIS #1                  | GLENVILLE FIELD          | 21.9 | EQUITABLE GAS CO  |
| 8141668                              |        | 4702102985 | 108 R L STALNAKER #2              | GLENVILLE FIELD          | 22.0 | CARNEGIE NATURAL  |
| 8141664                              |        | 4702103022 | 108 RUSSELL BUSH #1               | HOLBROOK FIELD           | 15.4 | CONSOLIDATED GAS  |
| -H E ACKER J STEPHEN HALL JAMES H HA |        |            | RECEIVED: 07/14/81 JA: WV         |                          |      |                   |
| 8141596                              |        | 4704102938 | 103 EDMISTON #1-A                 | HACKERS CREEK            | 25.0 | CONSOLIDATED GAS  |
| -HARROBONE GAS CO                    |        |            | RECEIVED: 07/14/81 JA: WV         |                          |      |                   |
| 8141646                              |        | 4705900960 | 108 WALDRON HEIRS #4              | TUG FORK OF BIG SANDY    | 6.4  | COLUMBIA GAS TRAN |
| -PENNZOIL COMPANY                    |        |            | RECEIVED: 07/14/81 JA: WV         |                          |      |                   |
| 8141643                              |        | 4704900615 | 108 W A BEATY #10                 | LINCOLN                  | 3.9  |                   |







The above notices of determination were received from the indicated jurisdictional agencies by the Federal Energy Regulatory Commission pursuant to the Natural Gas Policy Act of 1978 and 18 CFR 274.104. Negative determinations are indicated by a "D" before the section code. Estimated annual production (PROD) is in million cubic feet (MMCF). An (\*) before the Control (JD) number denotes additional purchasers listed at the end of the notice.

The applications for determination are available for inspection except to the

extent such material is confidential under 18 CFR 275.206, at the Commission's Division of Public Information, Room 1000, 825 North Capitol St., Washington, D.C. Persons objecting to any of these determinations may, in accordance with 18 CFR 275.203 and 275.204, file a protest with the Commission on or before August 31, 1981.

Categories within each NGPA section are indicated by the following codes:

Section 102-1: New OCS lease  
102-2: New well (2.5 mile rule)  
102-3: New well (1000 ft rule)  
102-4: New onshore reservoir

102-5: New reservoir on old OCS lease  
Section 107-DP: 15,000 feet or deeper  
107-GB: Geopressured brine  
107-CS: Coal seams  
107-DV: Devonian shale  
107-PE: Production enhancement  
107-TF: New tight formation  
107-RT: Recompletion tight formation  
Section 108: Stripper well  
108-SA: Seasonally affected  
108-ER: Enhanced recovery  
108-PB: Pressure buildup

Kenneth F. Plumb,  
*Secretary.*

[FR Doc. 81-23700 Filed 8-13-81; 8:45 am]

BILLING CODE 6450-85-M



## Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

Issued: August 6, 1981.

| CO NO                       | JA DKT       | API NO     | I SEC CAT WELL NAME               | FIELD NAME               | PRCD   | PURCHASER         |
|-----------------------------|--------------|------------|-----------------------------------|--------------------------|--------|-------------------|
| TEXAS RAILROAD COMMISSION   |              |            |                                   |                          |        |                   |
| *****                       |              |            |                                   |                          |        |                   |
| -ALFRED C GLASSSELL JR      |              |            |                                   |                          |        |                   |
| 8141905                     | F-06-030513  | 4236500000 | 107-TF DUNAWAY UNIT #10           | CARTHAGE                 | 365.0  | ARKANSAS-LOUISIAN |
| 8141904                     | F-06-030511  | 4236500000 | 107-TF DUNAWAY UNIT #9            | CARTHAGE                 | 365.0  | ARKANSAS-LOUISIAN |
| -ALLEGRO INVESTMENTS INC    |              |            |                                   |                          |        |                   |
| 8141844                     | F-02-018-940 | 4217531263 | 103 LOUISE STEELE #1-C IDAPENDING | WILDCAT - PROPOSED GOLIA | 100.0  | DELHI GAS PIPELIN |
| 8141845                     | F-02-018941  | 4217531263 | 103 LOUISE STEELE 1-T I D 89279   | WILHELM (FRIO 2900) FIEL | 100.0  | DELHI GAS PIPELIN |
| -AMMEX PETROLEUM INC        |              |            |                                   |                          |        |                   |
| 8141879                     | F-03-028637  | 4214930425 | 102-2 BILLY JACK #1               | GIDDINGS (AUSTIN CHALK)  | 17.0   | CLAJON GAS CO     |
| 8141879                     | F-03-028637  | 4214930425 | 103 BILLY JACK #1                 | GIDDINGS (AUSTIN CHALK)  | 17.0   | CLAJON GAS CO     |
| 8141921                     | F-03-031642  | 4205130916 | 102-2 CORDIE UNIT #1              | GIDDINGS (AUSTIN CHALK)  | 230.4  | CLAJON GAS CO     |
| 8141921                     | F-03-031648  | 4205130916 | 103 CORDIE UNIT #1                | GIDDINGS (AUSTIN CHALK)  | 230.4  | CLAJON GAS CO     |
| 8141920                     | F-03-031647  | 4205131040 | 102-2 SALLY #1                    | GIDDINGS (AUSTIN CHALK)  | 108.0  | CLAJON GAS CO     |
| 8141920                     | F-03-031647  | 4205131040 | 103 SALLY #1                      | GIDDINGS (AUSTIN CHALK)  | 108.0  | CLAJON GAS CO     |
| 8141860                     | F-03-025663  | 4214930530 | 102-2 SUSIE UNIT #1               | GIDDINGS (AUSTIN CHALK)  | 252.0  | CLAJON GAS CO     |
| 8141860                     | F-03-025663  | 4214930530 | 103 SUSIE UNIT #1                 | GIDDINGS (AUSTIN CHALK)  | 252.0  | CLAJON GAS CO     |
| -AMOCO PRODUCTION CO        |              |            |                                   |                          |        |                   |
| 8142093                     | F-05-036915  | 4234931401 | 102-4 DEE GARRETT LIVELY CU #1    | CHENEYBORO/COTTON VALLEY | 107.0  | LONE STAR GAS CO  |
| 8142093                     | F-05-036919  | 4234931401 | 107-TF DEE GARRETT LIVELY CU #1   | CHENEYBORO/COTTON VALLEY | 107.0  | LONE STAR GAS CO  |
| 8142094                     | F-05-036925  | 4234931161 | 102-4 H P BONNER WELL NO 1        | CHENEYBORO/COTTON VALLEY | 25.0   | LONE STAR GAS CO  |
| 8142094                     | F-05-036925  | 4234931161 | 107-TF H P BONNER WELL NO 1       | CHENEYBORO/COTTON VALLEY | 25.0   | LONE STAR GAS CO  |
| 8141972                     | F-05-035001  | 4234930916 | 107-TF INA K CARROLL OIL UNIT #1  | CHENEYBORO/COTTON VALLEY | 149.7  | LONE STAR GAS CO  |
| 8141973                     | F-05-035007  | 4234931115 | 107-TF INA K CARROLL OIL UNIT #1  | CHENEYBORO/COTTON VALLEY | 109.0  | LONE STAR GAS CO  |
| 8142008                     | F-8A-036262  | 4221933007 | 103 MAY-MONTGOMERY UNIT #73       | LEVILLAND                | 13.7   | AMOCO PRODUCTION  |
| -ANDARKO PRODUCTION COMPANY |              |            |                                   |                          |        |                   |
| 8141945                     | F-7C-033335  | 4238300000 | 102-2 SALLIE FOX NO 1             | COPE PROSPECT            | 91.0   | PANHANDLE EASTERN |
| 8141945                     | F-7C-033335  | 4238300000 | 107-TF SALLIE FOX NO 1            | COPE PROSPECT            | 91.0   | PANHANDLE EASTERN |
| -ANDERSON PETROLEUM INC     |              |            |                                   |                          |        |                   |
| 8141882                     | F-7C-028779  | 4210532954 | 103 FRANK WHITE A 3-85            | OZONA (CANYON SAND)      | 55.0   | ANDERSON PIPELINE |
| 8141882                     | F-7C-028779  | 4210532954 | 107-TF FRANK WHITE A 3-85         | OZONA (CANYON SAND)      | 55.0   | ANDERSON PIPELINE |
| 8141881                     | F-7C-028778  | 4235322608 | 103 IDA CAUTHORN #2-131           | SAYNER (CANYON)          | 55.0   | SUTTON COUNTY PIP |
| 8141881                     | F-7C-028778  | 4235322608 | 107-TF IDA CAUTHORN #2-131        | SAYNER (CANYON)          | 55.0   | SUTTON COUNTY PIP |
| -ARCO OIL AND GAS COMPANY   |              |            |                                   |                          |        |                   |
| 8142089                     | F-08-036907  | 4200232653 | 103 EMMA COWDEN #93               | EMMA (GRAYBURG)          | 20.0   | EL PASO NATURAL G |
| 8142031                     | F-10-036614  | 4206530815 | 103 IDA BLOCK NO 9                | PANHANDLE CARSON COUNTY  | 2.0    | GELTY OIL CO      |
| 8141874                     | F-08-028488  | 4237132862 | 107-DP J P ROBBINS WELL NO 1-X    | WILDCAT                  | 125.0  | UNITED TEXAS TRAN |
| 8142090                     | F-10-036910  | 4229530908 | 102-4 SORENSON NO 3               | KIOVA CREEK N (MORROW U) | 36.5   | TRANSWESTERN PIPE |
| -ASPEN PETROLEUM INC        |              |            |                                   |                          |        |                   |
| 8142087                     | F-10-036901  | 4217930835 | 103 SHERIDAN WELL NO 2 04719      | PANHANDLE GRAY COUNTY FI | 72.0   | CABOT PIPELINE CO |
| 8142088                     | F-10-036902  | 4217930833 | 103 SHERIDAN WELL NO 4 04719      | PANHANDLE GRAY COUNTY FI | 72.0   | CABOT PIPELINE CO |
| -B & B FARM INDUSTRIES INC  |              |            |                                   |                          |        |                   |
| 8142063                     | F-10-036798  | 4248230750 | 102-4 ELMORE 1-32 91911           | ALLISON-BRITT (12350)    | 1000.0 | COLORADO INTERSTA |



PAGE 002

VOLUME 465

| WELL NAME                | FIELD NAME | PROD  | PURCHASER         |
|--------------------------|------------|-------|-------------------|
| THORNDIKE (ATOKA)        |            | 350.0 | COLORADO INTERSTA |
| JORDAN (NAVARRO 8)       |            | 75.0  | FERGUSON CROSSING |
| WALKER-DAVIS (DUFFER LIM |            | 100.0 | LORE STAR GAS CO  |
| BULER N CLEVELAND        |            | 43.2  | PHILLIPS PETROLEU |
| PANHANDLE HUTCHINSON CO  |            | 10.0  | PANHANDLE EASTERN |
| PANHANDLE HUTCHINSON CO  |            | 6.0   | PANHANDLE EASTERN |
| SPANISH CAMP (YEGUA 7700 |            | 0.0   | NATURAL GAS PIPEL |
| CMI (SPRABERRY)          |            | 14.6  | PHILLIPS PETROLEU |
| GIDDINGS                 |            | 0.0   | FERGUSON CROSSING |
| GIDDINGS                 |            | 0.0   | FERGUSON CROSSING |
| WILCCAT (COTTON VALLEY)  |            | 0.0   | HYDROCARBON TRANS |
| STRATTON                 |            | 9.6   | TENNESSEE GAS PIP |
| GIDDINGS                 |            | 277.8 | FERGUSON CROSSING |
| GIDDINGS                 |            | 277.8 | FERGUSON CROSSING |
| GIDDINGS/AUSTIN CHALK    |            | 0.0   | FERGUSON CROSSING |
| GIDDINGS/AUSTIN CHALK    |            | 0.0   | FERGUSON CROSSING |
| THIEPIN (DEVONIAN)       |            | 0.0   |                   |
| KELLY SNYDER             |            | 60.0  | EL PASO NATURAL G |
| ARENGO                   |            | 31.8  | PHILLIPS PETROLEU |
| KEYSTONE (CLEARFORK)     |            | 16.0  | TRANSWESTERN PIPE |
| KEYSTONE (CLEARFORK)     |            | 30.0  | TRANSWESTERN PIPE |
| GIDDINGS                 |            | 0.0   | VALERO TRANSMISSI |
| DOUBLE ODDS (CADD0)      |            | 32.9  | PAO DURO PIPELIN  |
| LANSING NORTH (TRAVIS PE |            | 50.0  | ARKANSAS LOUISIAN |
| PANHANDLE (RED CAVE)     |            | 46.0  | COLORADO INTERSTA |
| FORD WEST (4100)         |            | 13.5  | EL PASO NATURAL G |
| GERALDINE FORD           |            | 5.5   | EL PASO NATURAL G |
| FOSTER                   |            | 3.7   | ODESSA NATURAL CO |
| PENA CREEK (SAN MIGUEL-3 |            | 10.0  | VALERO TRANSMISSI |
| PENA CREEK (SAN MIGUEL-3 |            | 10.0  | VALERO TRANSMISSI |
| BRACFORD/CLEVELAND       |            | 12.0  | TRANSWESTERN PIPE |
| RED LAND NORTH (TRAVIS P |            | 730.0 | UNITED GAS PIPE L |
| FRANTZ (MORROW LO)       |            | 0.0   | DIAMOND SHAROCK   |
| WINGATE (SEABREEZE SC) F |            | 547.0 | VALERO TRANSMISSI |
| WINGATE (SEABREEZE SC) F |            | 547.0 | VALERO TRANSMISSI |
| FARPER (SAN ANDRES)      |            | 0.0   |                   |

| WELL NAME                    | FIELD NAME | PROD | PURCHASER |
|------------------------------|------------|------|-----------|
| HENRY JOHNSON #1 91786       |            |      |           |
| RECEIVED: 07/17/81 JA: TX    |            |      |           |
| GARLAND WESTBROOK NC 2       |            |      |           |
| RECEIVED: 07/17/81 JA: TX    |            |      |           |
| J BUCKLER TRUST #1           |            |      |           |
| RECEIVED: 07/17/81 JA: TX    |            |      |           |
| CLARK 1-94                   |            |      |           |
| RECEIVED: 07/17/81 JA: TX    |            |      |           |
| YAKE CABOT-FAULCONER #6-4    |            |      |           |
| RECEIVED: 07/17/81 JA: TX    |            |      |           |
| YAKE CABOT-FAULCONER #8-4    |            |      |           |
| RECEIVED: 07/17/81 JA: TX    |            |      |           |
| F B & D DUNCAN NO 1          |            |      |           |
| RECEIVED: 07/17/81 JA: TX    |            |      |           |
| R A MORET NO 1               |            |      |           |
| RECEIVED: 07/17/81 JA: TX    |            |      |           |
| BENATE HEUL NO 1             |            |      |           |
| RECEIVED: 07/17/81 JA: TX    |            |      |           |
| BENATE HEUL NO 1             |            |      |           |
| RECEIVED: 07/17/81 JA: TX    |            |      |           |
| EVA PEARL SYBERT CANNON #1   |            |      |           |
| RECEIVED: 07/17/81 JA: TX    |            |      |           |
| J W DRYDEN NO 2              |            |      |           |
| RECEIVED: 07/17/81 JA: TX    |            |      |           |
| JOE F CHARANZA NC 1          |            |      |           |
| RECEIVED: 07/17/81 JA: TX    |            |      |           |
| JOE F CHARANZA NO 1          |            |      |           |
| RECEIVED: 07/17/81 JA: TX    |            |      |           |
| TIEHAN DIPPEL NO 1           |            |      |           |
| RECEIVED: 07/17/81 JA: TX    |            |      |           |
| TIEHAN DIPPEL NO 1           |            |      |           |
| RECEIVED: 07/17/81 JA: TX    |            |      |           |
| J N THIEPIN #1               |            |      |           |
| RECEIVED: 07/17/81 JA: TX    |            |      |           |
| SACROC UNIT 28-13            |            |      |           |
| RECEIVED: 07/17/81 JA: TX    |            |      |           |
| WEST RANCH NO 14-A           |            |      |           |
| RECEIVED: 07/17/81 JA: TX    |            |      |           |
| W E BAIRD 12-52C             |            |      |           |
| RECEIVED: 07/17/81 JA: TX    |            |      |           |
| W E BAIRD 13-76C             |            |      |           |
| RECEIVED: 07/17/81 JA: TX    |            |      |           |
| JOHNNIE MYNAR #1             |            |      |           |
| RECEIVED: 07/17/81 JA: TX    |            |      |           |
| KENNETH DUNCAN #1            |            |      |           |
| RECEIVED: 07/17/81 JA: TX    |            |      |           |
| BURTON GAS UNIT NO 1         |            |      |           |
| RECEIVED: 07/17/81 JA: TX    |            |      |           |
| MASTERTON D 20160            |            |      |           |
| RECEIVED: 07/17/81 JA: TX    |            |      |           |
| G E RAMSEY -16-83 IC #26460  |            |      |           |
| RECEIVED: 07/17/81 JA: TX    |            |      |           |
| G E RAMSEY JR-8-44 ID #21020 |            |      |           |
| RECEIVED: 07/17/81 JA: TX    |            |      |           |
| GIST UNIT #129 ID #19373     |            |      |           |
| RECEIVED: 07/17/81 JA: TX    |            |      |           |
| PENA CREEK UNIT NO 56        |            |      |           |
| RECEIVED: 07/17/81 JA: TX    |            |      |           |
| PENA CREEK UNIT NO 57        |            |      |           |
| RECEIVED: 07/17/81 JA: TX    |            |      |           |
| BRACFORD B NO 2              |            |      |           |
| RECEIVED: 07/17/81 JA: TX    |            |      |           |
| BROWN C NO 1                 |            |      |           |
| RECEIVED: 07/17/81 JA: TX    |            |      |           |
| ER JEWELL NO 1               |            |      |           |
| RECEIVED: 07/17/81 JA: TX    |            |      |           |
| LUCILLE B DURAND ET AL NO 1  |            |      |           |
| RECEIVED: 07/17/81 JA: TX    |            |      |           |
| LUCILLE B DURAND ET AL NO 1  |            |      |           |
| RECEIVED: 07/17/81 JA: TX    |            |      |           |
| UNIVERSITY IS WELL NO 1      |            |      |           |
| RECEIVED: 07/17/81 JA: TX    |            |      |           |



VOLUME 485

PAGE 503

| JD                            | JE          | API        | SEC    | CAT                               | WELL   | NAME                      | FIELD                    | PROD | PURCHASER |
|-------------------------------|-------------|------------|--------|-----------------------------------|--------|---------------------------|--------------------------|------|-----------|
| 8141853                       | F-7C-024415 | 4208130650 | 102-2  | BLAYLOCK NO 1                     |        | WEAVER RANCH (GOEN LIME)  | 200.0 PRODUCERS GAS CO   |      |           |
| 8141852                       | F-7C-024414 | 4208130651 | 102-2  | P C RAY NO 1                      |        | WEAVER RANCH (CADD OUPPE) | 100.0 PRODUCERS GAS CO   |      |           |
| 8141854                       | F-7C-024416 | 4208130652 | 102-2  | WILLCOCKSON NO 1 (07617)          | JA: TX | WEAVER RANCH (CADD LOWE)  | 100.0 PRODUCERS GAS CO   |      |           |
| -CUMMINGS OIL CO              |             |            |        | RECEIVED: 07/17/81                |        |                           |                          |      |           |
| 8141842                       | F-7C-018092 | 4210531912 | 102-4  | WEST NO 1                         |        | R R C DISTRICT 7-C        | 60.0 EL PASO NATURAL G   |      |           |
| 8141842                       | F-7C-018092 | 4210531912 | 103    | WEST NO 1                         |        | R R C DISTRICT 7-C        | 60.0 EL PASO NATURAL G   |      |           |
| 8141843                       | F-7C-018093 | 4210532013 | 102-4  | WEST NO 2                         |        | R R C DISTRICT 7-C        | 90.0 EL PASO NATURAL G   |      |           |
| 8141843                       | F-7C-018093 | 4210532013 | 103    | WEST NO 2                         |        | R R C DISTRICT 7-C        | 90.0 EL PASO NATURAL G   |      |           |
| -CAR RESOURCES INC            |             |            |        | RECEIVED: 07/17/81                | JA: TX |                           |                          |      |           |
| 8141895                       | F-03-023508 | 4214932552 | 103    | HECK-SMOKEY JOE #1 #13528         |        | GIDDINGS (AUSTIN CHALK)   | 112.0 PHILLIPS PETROLEU  |      |           |
| 8141896                       | F-03-023509 | 4214932558 | 103    | JOHANSON #1 OIL UNIT - 12769      |        | GIDDINGS (AUSTIN CHALK)   | 44.2 PHILLIPS PETROLEU   |      |           |
| -D B BAXTER                   |             |            |        | RECEIVED: 07/17/81                | JA: TX |                           |                          |      |           |
| 8142039                       | F-08-036710 | 4237130958 | 108    | YEAGER #1                         |        | PECCS VALLEY (DETRITAL)   | 10.8 DELHI GAS PIPELIN   |      |           |
| -D D MOUTCHENS                |             |            |        | RECEIVED: 07/17/81                | JA: TX |                           |                          |      |           |
| 8141868                       | F-10-027134 | 4208780000 | 108    | WISCHKAEMPER #1-D                 |        | EAST PANHANDLE            | 0.0 EL PASO NATURAL G    |      |           |
| -D M HUNT                     |             |            |        | RECEIVED: 07/17/81                | JA: TX |                           |                          |      |           |
| 8142004                       | F-02-035141 | 4212331120 | 103    | GOHMERT GAS UNIT WELL NO 1-1      |        | ARNECKEVILLE/YESUA 4870   | 167.0 TEXAS EASTERN TRA  |      |           |
| -DAVID A SCHLACHTER OIL & GAS |             |            |        | RECEIVED: 07/17/81                | JA: TX |                           |                          |      |           |
| 8141939                       | F-7C-033029 | 4210533158 | 103    | L B COX 11-1                      |        | OZONA (CANYON SAND)       | 50.0 ANDERSON PIPELINE   |      |           |
| 8141939                       | F-7C-033029 | 4210533158 | 107-1F | L B COX 11-1                      |        | OZONA (CANYON SAND)       | 50.0 ANDERSON PIPELINE   |      |           |
| -DELTA DRILLING CO            |             |            |        | RECEIVED: 07/17/81                | JA: TX |                           |                          |      |           |
| 8141925                       | F-7C-031893 | 4210530000 | 108    | FRIEND A #3 U 45130               |        | OZONA (CANYON)            | 0.0 NORTHERN NATURAL     |      |           |
| 8141897                       | F-7C-029574 | 4241300000 | 107-1F | JACKSON #4 89250                  |        | EL DORADO (CANYON)        | 48.0 NORTHERN NATURAL    |      |           |
| -DIAMOND SHAMROCK CORPORATION |             |            |        | RECEIVED: 07/17/81                | JA: TX |                           |                          |      |           |
| 8141866                       | F-10-029228 | 4239330765 | 103    | JAMES WATERFIELD B NO 3           |        | PARSELL SOUTH             | 166.0                    |      |           |
| -DISCORBS OIL CO              |             |            |        | RECEIVED: 07/17/81                | JA: TX |                           |                          |      |           |
| 8141855                       | F-02-025236 | 4217531215 | 103    | ERNA VOLKMER GAS UNIT #1          |        | WILDCAT                   | 0.0 DELHI GAS PIPELIN    |      |           |
| -DISCOVERY OPERATING INC      |             |            |        | RECEIVED: 07/17/81                | JA: TX |                           |                          |      |           |
| 8142092                       | F-7C-036918 | 4241350935 | 102-4  | HENDERSON #1                      |        | DISCOVERY (CANYON)        | 54.0 CRA INC             |      |           |
| 8141924                       | F-08-031886 | 4200332374 | 103    | UNIVERSITY 11 A #1                |        | BLOCK 11 (WICHITA LOWER)  | 71.9 PHILLIPS PETROLEU   |      |           |
| -DIVERSE INC                  |             |            |        | RECEIVED: 07/17/81                | JA: TX |                           |                          |      |           |
| 8142050                       | F-7B-036740 | 4236332451 | 103    | #1 TOMERLIN                       |        | WATSON (STRAWN LOWER)     | 100.0 SOUTHWESTERN GAS   |      |           |
| -DURHAM INC                   |             |            |        | RECEIVED: 07/17/81                | JA: TX |                           |                          |      |           |
| 8141966                       | F-8A-034825 | 4226300000 | 103    | RISING STAR IR                    |        | BOOPERANG S (STRAWN LIME) | 0.0 SUM GAS CO           |      |           |
| -EL PASO NATURAL GAS COMPANY  |             |            |        | RECEIVED: 07/17/81                | JA: TX |                           |                          |      |           |
| 8141942                       | F-7C-033181 | 4243515221 | 108    | MECKEL #5                         |        | SONORA CANYON UPPER       | 9.1 EL PASO NATURAL G    |      |           |
| 8141917                       | F-10-031454 | 4221131217 | 103    | MEER #1                           |        | BUFFALO HOLLOW GRANITE W  | 1071.0 EL PASO NATURAL G |      |           |
| 8142024                       | F-10-036503 | 4208726213 | 108    | NICHOLSON D #1                    |        | PANHANDLE EAST            | 14.0 EL PASO NATURAL G   |      |           |
| -ENERGY RESERVES GROUP INC    |             |            |        | RECEIVED: 07/17/81                | JA: TX |                           |                          |      |           |
| 8141962                       | F-7C-034569 | 4208130924 | 103    | J E CHAPPELL A #5                 |        | JAMESON (STRAWN)          | 10.8 UNION TEXAS PETRO   |      |           |
| -ENRE CORP                    |             |            |        | RECEIVED: 07/17/81                | JA: TX |                           |                          |      |           |
| 8141892                       | F-7B-023333 | 4205932716 | 102-4  | SNYDER MINERAL TRUST #2-C (16072) |        | S M T (ELLENBURGER)       | 51.0 BENGAL GAS TRANSP   |      |           |
| -ENSERCH EXPLORATION INC      |             |            |        | RECEIVED: 07/17/81                | JA: TX |                           |                          |      |           |
| 8142003                       | F-01-036031 | 4212732120 | 103    | A G DROUGHT NO 12                 |        | PENA CREEK                | 25.0                     |      |           |
| 8142000                       | F-05-035728 | 4228900000 | 108    | C L CADENHEAD NO 1                |        | REC OAK                   | 9.0 LONE STAR GAS CO     |      |           |
| 8141894                       | F-09-029505 | 4249731728 | 103    | J B REMHELE NO 2                  |        | BOONSVILLE                | 325.0 LONE STAR GAS CO   |      |           |
| 8141923                       | F-05-031768 | 4221300000 | 108    | R R EDWARDS NO 1                  |        | OPELIKA                   | 9.0 LONE STAR GAS CO     |      |           |
| 8141850                       | F-09-029190 | 4249731830 | 103    | W W MURPHY NO 2                   |        | BOONSVILLE                | 705.0 LONE STAR GAS CO   |      |           |
| -EXPANCO OIL CO               |             |            |        | RECEIVED: 07/17/81                | JA: TX |                           |                          |      |           |
| 8141885                       | F-09-029171 | 4250300000 | 103    | DAVIS #1                          |        | WILLCAT YOUNG CO REGULAR  | 184.0 LONE STAR GAS CO   |      |           |
| -EXXON CORPORATION            |             |            |        | RECEIVED: 07/17/81                | JA: TX |                           |                          |      |           |
| 8141971                       | F-03-034951 | 4205160000 | 102-2  | COOKS POINT UNIT AC 2 WELL 1      |        | GIDDINGS (AUSTIN CHALK)   | 18.0 FERGUSON CROSSING   |      |           |
| 8142021                       | F-03-035475 | 4205131162 | 102-2  | COOKS POINT UNIT NO 8 WELL 1      |        | GIDDINGS (AUSTIN CHALK-3) | 15.0 FERGUSON CROSSING   |      |           |



VOLUME 485

PAGE 008

| JD NO                          | JA DKT       | ALI NO     | I SEC CAT | WELL NAME                           | FIELD NAME                 | PROD   | PURCHASER          |
|--------------------------------|--------------|------------|-----------|-------------------------------------|----------------------------|--------|--------------------|
| 8142005                        | F-08-035191  | 4210332391 | 103       | CORDONA LAKE UNIT #62               | CORDONA LAKE               | 20.0   | ODESSA NATURAL CO  |
| 8142011                        | F-08-035318  | 4200332569 | 103       | FULLERTON CLEARFORK UNIT #437       | FULLERTON                  | 20.0   | PHILLIPS PETROLEUM |
| 8142046                        | F-08-035725  | 4210332422 | 103       | J B TUBB A/C 2 #240L                | SAND HILLS (TUBB)          | 128.0  | EL PASO NATURAL CO |
| *8142002                       | F-04-0356021 | 422130234  | 103       | K R SAN JOSE DE LA PARRA 16-F       | CALACRIA (18600 FRI0)      | 550.0  | ARMCO STEEL CO     |
| *8141965                       | F-08-034793  | 4200332528 | 103       | MEANS/SAN ANDRES/UNIT #1660         | MEANS                      | 2.0    | PHILLIPS PETROLEUM |
| *8141953                       | F-04-035616  | 4226130560 | 103       | R J K JR TR STILLMAN PASTURE #7 #8  | STILLMAN (SHALLOW)         | 180.0  | ARMCO STEEL CO     |
| *8141954                       | F-04-035735  | 4226130223 | 103       | R J K JR TR STILLMAN 33-F (78828)   | STILLMAN                   | 109.5  | ARMCO STEEL CO     |
| 8141982                        | F-04-035487  | 4226130532 | 103       | SARITA OIL & GAS UNIT 152 (92969)   | SARITA (BB)                | 250.0  | NATURAL GAS PIPEL  |
| 8142013                        | F-04-035856  | 4248930635 | 103       | SAUZ RANCH PULATOS PASTURE 165 (10) | WILLIAM WEST (WIOCENE 6)   | 300.0  | NATURAL GAS PIPEL  |
| 8141869                        | F-06-027332  | 4240130736 | 102-3     | W C STRONG GAS UNIT NO 1            | OAK HILL (COTTON VALLEY)   | 134.0  | UNITED GAS PIPEL   |
| RECEIVED: 07/17/81 JA: TX      |              |            |           |                                     |                            |        |                    |
| 8142029                        | F-78-036557  | 4235330962 | 102-4     | RICHARD GESIN #3                    | WITPERS (ELLENBURGER)      | 38.5   | PALO DURO PIPELIN  |
| 8142029                        | F-78-036557  | 4235330962 | 103       | RICHARD GESIN #3                    | WITPERS (ELLENBURGER)      | 38.5   | PALO DURO PIPELIN  |
| RECEIVED: 07/17/81 JA: TX      |              |            |           |                                     |                            |        |                    |
| *8142051                       | F-7C-035756  | 4223531710 | 103       | #3 CRAWFORD 1230                    | BAKER RANCH (CANYON)       | 232.6  | CRA INC            |
| 8142076                        | F-7C-036836  | 4223531665 | 103       | BAKER B #2                          | CAL (CANYON)               | 71.0   |                    |
| *8142052                       | F-7C-035757  | 4223531665 | 103       | MURPHEY #1                          | CAL SOUTH (CANYON)         | 72.1   | CRA INC            |
| RECEIVED: 07/17/81 JA: TX      |              |            |           |                                     |                            |        |                    |
| -S C HERRMANN CO               |              |            |           |                                     | PANHANDLE                  | 173.4  | CABOT CORP         |
| 8142018                        | F-10-035464  | 4217530780 | 103       | MELTON 04595 WELL #1                | LCS CUATROS                | 240.0  | TEJAS GAS CORP     |
| -GAS RESOURCES INC             |              |            |           |                                     |                            |        |                    |
| 8141849                        | F-01-022934  | 4232331183 | 102-2     | MAVERICK COUNTY #2                  | SILVER CREEK (MISS)        | 115.0  |                    |
| RECEIVED: 07/17/81 JA: TX      |              |            |           |                                     |                            |        |                    |
| 8141963                        | F-10-034601  | 4248330730 | 103       | A D MAY NO 1                        | SILVER CREEK (MISS)        | 115.0  |                    |
| 8141963                        | F-10-034601  | 4248330730 | 107-TF    | A D MAY NO 1                        | CARTAGE (COTTON VALLEY)    | 420.0  | DELHI GAS PIPELIN  |
| 8141944                        | F-06-033333  | 4236500080 | 107-TF    | A E CARROLL #2                      | CARTAGE (COTTON VALLEY)    | 768.0  | DELHI GAS PIPELIN  |
| 8141913                        | F-06-030997  | 4236500968 | 107-TF    | B J JOHNSON WELL #2                 | PANHANDLE HUTCHINSON       | 2.6    | J M HUBER CORP     |
| 8142042                        | F-10-036714  | 4223330958 | 103       | CROSBY & HATCHER NO 13              | PANHANDLE HUTCHINSON       | 3.3    | J M HUBER CORP     |
| 8142081                        | F-10-036713  | 4223331021 | 103       | CROSBY & HATCHER AC 14              | CARTAGE (COTTON VALLEY)    | 277.0  | DELHI GAS PIPELIN  |
| 8141946                        | F-06-033335  | 4236500000 | 107-TF    | DEADWOOD UNIT #2                    | FLOWERS (CANYON SAND)      | 3.0    | CITIES SERVICE CO  |
| 8142026                        | F-78-036519  | 4243331145 | 103       | FLOWERS CANYON SAND UNIT #177       | CARTAGE (COTTON VALLEY)    | 250.0  | DELHI GAS PIPELIN  |
| 8141947                        | F-06-033340  | 4236500000 | 107-TF    | FROST 8 #2                          | CARTAGE (COTTON VALLEY)    | 1.5    | PANHANDLE EASTERN  |
| 8142083                        | F-10-036712  | 4223331028 | 103       | HERRING A TRACT 2 #108              | PANHANDLE HUTCHINSON       | 5.8    | PANHANDLE EASTERN  |
| 8142080                        | F-10-036712  | 4223331030 | 103       | HERRING A TRACT 2 NC 107            | CARTAGE (COTTON VALLEY)    | 870.0  | TEJAS GAS CORP     |
| 8141932                        | F-06-032499  | 4236531048 | 107-TF    | HICKS GAS UNIT WELL #2              | GIDTINGS (AUSTIN CHALK)    | 493.0  | FERGUSON CROSSING  |
| 8141936                        | F-03-033922  | 4205331214 | 102-2     | J P HARTMAN #1                      | MADERA RANCH (FLOWER PENN) | 456.0  | INTRATEX GAS CO    |
| 8141876                        | F-08-028536  | 4230330227 | 107-OP    | MALCOLM R MADERA ET AL #1           | WILLCAT (WOLF CAMP)        | 750.0  | VALERO TRANSMISSI  |
| 8141933                        | F-06-039251  | 4237132876 | 107-OP    | MIRIAM WATCHLIFE ET AL WELL NO 1    | CARTAGE (COTTON VALLEY)    | 728.0  | UNITED GAS PIPEL   |
| 8141936                        | F-06-032602  | 4236530961 | 107-TF    | S S HARRIS NO 3                     | CARTAGE (COTTON VALLEY)    | 0.0    | UNITED GAS PIPEL   |
| 8141935                        | F-06-032601  | 4236500000 | 107-TF    | SALLIE BAKER #3                     | RED FISH BAY (ZONE 45)     | 0.0    | ALUMINUM CO OF AM  |
| 8141873                        | F-04-028104  | 4235531528 | 103       | T S T 421 WELL #1                   | FRANCITAS                  | 3.7    | INTRATEX GAS CO    |
| 8141872                        | F-02-027938  | 4235300000 | 108       | TAYLOR UNIT WELL #1                 | LITTLE JOE (ELLENBURGER)   | 1750.0 | INTRATEX GAS CO    |
| 8141944                        | F-08-035534  | 4249331251 | 107-OP    | UNIVERSITY 39-21 WELL NO 1          | CARTAGE (COTTON VALLEY)    | 164.0  | DELHI GAS PIPELIN  |
| 8141948                        | F-06-033341  | 4236500000 | 107-TF    | WALLACE UNIT WELL #2                | CARTAGE (COTTON VALLEY)    | 238.0  | UNITED GAS PIPEL   |
| 8141949                        | F-06-033385  | 4236500000 | 107-TF    | WERNER A #2                         | CARTAGE (COTTON VALLEY)    | 0.0    | DELHI GAS PIPELIN  |
| 8141933                        | F-06-032501  | 4236531122 | 107-TF    | WERNER D #2                         | CARTAGE (COTTON VALLEY)    | 0.0    | DELHI GAS PIPELIN  |
| 8141918                        | F-06-031486  | 4236500000 | 103       | WERNER-BURTON #2                    | CARTAGE (COTTON VALLEY)    | 0.0    | DELHI GAS PIPELIN  |
| 8141918                        | F-06-031486  | 4236500000 | 107-TF    | WERNER-BURTON #2                    | CARTAGE (COTTON VALLEY)    | 0.0    | DELHI GAS PIPELIN  |
| 8141850                        | F-06-024029  | 4236500000 | 103       | WERNER-THOMPSON #2                  | CARTAGE (COTTON VALLEY)    | 591.0  | DELHI GAS PIPELIN  |
| 8141850                        | F-06-024029  | 4236500000 | 107-TF    | WERNER-THOMPSON #2                  | CARTAGE (COTTON VALLEY)    | 591.0  | DELHI GAS PIPELIN  |
| RECEIVED: 07/17/81 JA: TX      |              |            |           |                                     |                            |        |                    |
| -GUERNEY PETROLEUM CORPORATION |              |            |           |                                     | HENS-PAW (3550)            | 0.0    | UNITED GAS PIPEL   |
| 8141955                        | F-04-033817  | 4224331130 | 103       | KLATT #1                            | SANTER (CANYON)            | 39.6   | INTRATEX GAS CO    |
| RECEIVED: 07/17/81 JA: TX      |              |            |           |                                     |                            |        |                    |
| -HNE OIL COMPANY               |              |            |           |                                     |                            |        |                    |
| 8142059                        | F-7C-036933  | 4241330428 | 103       | CLARK 58 #1                         |                            |        |                    |



| JO NO                          | JO DAT      | API NO     | E SEC CAT | WELL NAME                        | FIELD NAME                | PRCD  | PURCHASER          |
|--------------------------------|-------------|------------|-----------|----------------------------------|---------------------------|-------|--------------------|
| 8142070                        | F-7C-036808 | 4243532153 | 103       | DIEBITSCH 70 #3                  | SAWYER (CANYON)           | 38.8  | INTRATEX GAS CO    |
| 8142102                        | F-7C-036936 | 4243531958 | 103       | FIELDS 19 #3                     | SAWYER (CANYON)           | 13.1  | INTRATEX GAS CO    |
| 8142096                        | F-7C-036938 | 4243531950 | 103       | FIELDS 20 #3                     | SAWYER (CANYON)           | 3.4   | INTRATEX GAS CO    |
| 8142097                        | F-7C-036931 | 4243532166 | 103       | FIELDS 21 #3                     | SAWYER (CANYON)           | 11.0  | INTRATEX GAS CO    |
| 8142101                        | F-7C-036935 | 4243532032 | 103       | FIELDS 29 #1                     | SAWYER (CANYON)           | 8.6   | INTRATEX GAS CO    |
| 8142098                        | F-7C-036932 | 4243532005 | 103       | FIELDS 52 #2                     | SAWYER (CANYON)           | 144.0 | INTRATEX GAS CO    |
| 8142095                        | F-7C-036929 | 4243531989 | 103       | FIELDS 53 #2                     | SAWYER (CANYON)           | 14.0  | INTRATEX GAS CO    |
| 8142105                        | F-7C-036941 | 4243531960 | 103       | KIRBY 2 #2                       | SAWYER (CANYON)           | 26.0  | INTRATEX GAS CO    |
| 8142106                        | F-7C-036942 | 4243531970 | 103       | LANCASTER 5 #3                   | SAWYER (CANYON)           | 15.0  | INTRATEX GAS CO    |
| 8142104                        | F-7C-036934 | 4243530411 | 103       | MITTEL 64 #2 72043               | SAWYER (CANYON)           | 54.8  | INTRATEX GAS CO    |
| 8142034                        | F-7C-036934 | 4243530429 | 103       | MITTEL 64 #3                     | SAWYER (CANYON)           | 8.9   | INTRATEX GAS CO    |
| 8142034                        | F-7C-036934 | 4243530641 | 103       | SMITH 129 #1                     | SAWYER (CANYON)           | 0.0   | INTRATEX GAS CO    |
| 8142068                        | F-7C-036806 | 4243532113 | 103       | VANDERSTUCKEN 1 #4               | SAWYER (CANYON)           | 91.8  | INTRATEX GAS CO    |
| 8142069                        | F-7C-036807 | 4243531957 | 103       | VANDERSTUCKEN 2 #2               | SAWYER (CANYON)           | 175.6 | INTRATEX GAS CO    |
| 8142066                        | F-7C-036804 | 4243530000 | 103       | VANDERSTUCKEN 33 #2              | SAWYER (CANYON)           | 38.1  | INTRATEX GAS CO    |
| 8142064                        | F-7C-036802 | 4243530000 | 103       | VANDERSTUCKEN 34 #1              | SAWYER (CANYON)           | 118.0 | INTRATEX GAS CO    |
| 8142067                        | F-7C-036805 | 4243530000 | 103       | VANDERSTUCKEN 34 #3              | SAWYER (CANYON)           | 60.8  | INTRATEX GAS CO    |
| 8142065                        | F-7C-036803 | 4243530000 | 103       | VANDERSTUCKEN 35 #2              | SAWYER (CANYON)           | 88.6  | INTRATEX GAS CO    |
| 8142103                        | F-7C-036938 | 4243532011 | 103       | VANDERSTUCKEN 65 #4              | SAWYER (CANYON)           | 389.9 | INTRATEX GAS CO    |
| 8142014                        | F-03-036419 | 4243531426 | 103       | W S DAVIDSON A #6                | BIG HILL (MARGINULINA)    | 402.0 | TEXAS GAS PIPELINE |
| -HUGHES & HUGHES               |             |            |           | RECEIVED: 07/17/81               |                           |       |                    |
| 8142016                        | F-04-036441 | 4247932878 | 103       | BEASLEY-CONNEVEY #11             | LAS TIENDAS (WILCOX)      | 365.0 | HOUSTON PIPE LINE  |
| -HUNT OIL COMPANY              |             |            |           | RECEIVED: 07/17/81               |                           |       |                    |
| 8142020                        | F-06-036553 | 4221330255 | 103       | FAIRWAY (JAMES LINE) UNIT #548-2 | FAIRWAY (JAMES LINE) UNIT | 94.0  | LONE STAR GAS CO   |
| -IKE LOVELADY INC              |             |            |           | RECEIVED: 07/17/81               |                           |       |                    |
| 8142049                        | F-8A-036739 | 4203330623 | 103       | JOHNSON #1                       | S E GOOD FIELD            | 27.3  | GETTY OIL CO       |
| 8142048                        | F-7C-036738 | 4223531477 | 103       | PHILLIPS #1                      | IRICN WEST (CANYON)       | 36.5  | NORTHERN NATURAL   |
| 8142047                        | F-7C-036737 | 4223531559 | 103       | PHILLIPS #2                      | IRICA WEST (CANYON)       | 18.2  | NORTHERN NATURAL   |
| -INDEPENDENT EXPLORATION CO    |             |            |           | RECEIVED: 07/17/81               |                           |       |                    |
| 8142054                        | F-21-036762 | 4250731316 | 102-4     | IRE T PRYOR -E- #1 50277         | PRYOR EAST (ESCONDIDO)    | 24.0  | VALERO TRANSMISSI  |
| -IOC PRODUCTION INC            |             |            |           | RECEIVED: 07/17/81               |                           |       |                    |
| 8142012                        | F-03-036826 | 4208900000 | 108       | CRUEGER #1 GAS WELL ID #51869    | KRUEGER FIELD             | 6.0   | UNITED TEXAS TRAN  |
| -INTERNORTH INC                |             |            |           | RECEIVED: 07/17/81               |                           |       |                    |
| 8141931                        | F-10-032119 | 4235735935 | 103       | TAYLOR #2-84                     | SMITH PERRYTON            | 14.0  | INTERNORTH INC     |
| -J E CONNER                    |             |            |           | RECEIVED: 07/17/81               |                           |       |                    |
| 8142079                        | F-78-036858 | 4242932471 | 103       | AKIN-WRIGHT #1 (87669)           | STEPHENS COUNTY REGULAR   | 36.0  | WARREN PETROLEUM   |
| -J H MCCAMMON                  |             |            |           | RECEIVED: 07/17/81               |                           |       |                    |
| 8141998                        | F-7C-035657 | 4243532422 | 103       | FRANK REED NO 6 WELL             | SAWYER (CANYON)           | 130.0 | NORTHERN NATURAL   |
| -JACKSON EXPLORATION INC       |             |            |           | RECEIVED: 07/17/81               |                           |       |                    |
| 8141883                        | F-04-028015 | 4247900000 | 102-4     | BARRERA #1                       | BARRERA (LOBO 6)          | 730.0 | VALERO TRANSMISSI  |
| 8141883                        | F-04-028015 | 4247900000 | 103       | BARRERA #1                       | BARRERA (LOBO 6)          | 730.0 | VALERO TRANSMISSI  |
| -JOHN R THOMPSON OPERATING INC |             |            |           | RECEIVED: 07/17/81               |                           |       |                    |
| 8141900                        | F-04-029879 | 4240931380 | 103       | C S BROWN WELL NC 2              | HOWELL N E                | 109.5 | TRUNKLINE GAS CO   |
| -KEITH D GRAHAM                |             |            |           | RECEIVED: 07/17/81               |                           |       |                    |
| 8142078                        | F-03-036855 | 4205112370 | 102-2     | MARY LEE #2 1-13084              | GIECTAGS (AUSTIN CHALK-3) | 151.1 | CLAJON GAS CO      |
| -MERR-MCGEE CORPORATION        |             |            |           | RECEIVED: 07/17/81               |                           |       |                    |
| 8141908                        | F-10-030754 | 4229536868 | 103       | GRAY 853 #3                      | KICWA CREEK (CLEVELAND)   | 572.0 | NORTHERN NATURAL   |
| -L & M OIL CO                  |             |            |           | RECEIVED: 07/17/81               |                           |       |                    |
| 8141999                        | F-09-035699 | 4249732015 | 103       | C W CARSON #2 16470              | RISCH EAST ATCKA CONCL    | 35.0  | LONE STAR GAS CO   |
| -L R SPRADLING INC             |             |            |           | RECEIVED: 07/17/81               |                           |       |                    |
| 8141871                        | F-10-027864 | 4217900000 | 108       | M C DOSS #11                     | PANHANDLE                 | 1.9   | PHILLIPS PETROLEU  |
| -LA ACEITE ENERGY INC          |             |            |           | RECEIVED: 07/17/81               |                           |       |                    |
| 8141906                        | F-78-036636 | 4205932051 | 102-4     | FREC HART #1 (14804)             | L A (LAKE SAND)           | 15.0  | LONE STAR GAS CO   |







VOLUME 485

PAGE 007

| JD AC                               | JA WT       | API NO     | C SEC CAT WELL NAME            | FIELD NAME               | PROD  | PURCHASER           |
|-------------------------------------|-------------|------------|--------------------------------|--------------------------|-------|---------------------|
| 8142032                             | F-08-036621 | 4217331108 | 103 RECEIVED: 07/17/81         | SPRABERRY (TREND AREA)   | 77.0  | EL PASO NATURAL GAS |
| -OCEAN MINERALS INC                 |             |            |                                |                          |       |                     |
| 8141857                             | F-7C-025337 | 4210532603 | 103 UNIVERSITY #1 25-29        | INGHAM/DEVONIAN          | 547.0 | SOUTHWESTERN GAS    |
| 8141856                             | F-7C-025335 | 4210532602 | 103 UNIVERSITY #3 25-25        | INGHAM/QUEEN             | 73.0  | SOUTHWESTERN GAS    |
| -OILWELL OPERATORS INC              |             |            |                                |                          |       |                     |
| 8141993                             | F-10-035516 | 4217900000 | 108 GRAY #1 02920              | PANHANDLE-GRAY           | 11.0  | CABOT PIPELINE CO   |
| 8141987                             | F-10-035517 | 4217900000 | 108 GRAY #11 02520             | PANHANDLE-GRAY           | 11.0  | CABOT PIPELINE CO   |
| 8141986                             | F-10-035506 | 4217900000 | 108 GRAY #12 02920             | PANHANDLE-GRAY           | 11.0  | CABOT PIPELINE CO   |
| 8141985                             | F-10-035505 | 4217900000 | 108 GRAY #13 02920             | PANHANDLE-GRAY           | 11.0  | CABOT PIPELINE CO   |
| 8141984                             | F-10-035502 | 4217900000 | 108 GRAY #16 02920             | PANHANDLE-GRAY           | 11.0  | CABOT PIPELINE CO   |
| 8141983                             | F-10-035499 | 4217900000 | 108 GRAY #2 02920              | PANHANDLE-GRAY           | 11.0  | CABOT PIPELINE CO   |
| 8141992                             | F-10-035514 | 4217900000 | 108 GRAY #4 02920              | PANHANDLE-GRAY           | 11.0  | CABOT PIPELINE CO   |
| 8141991                             | F-10-035513 | 4217900000 | 108 GRAY #5 02920              | PANHANDLE-GRAY           | 11.0  | CABOT PIPELINE CO   |
| 8141990                             | F-10-035512 | 4217900000 | 108 GRAY #6 02920              | PANHANDLE-GRAY           | 11.0  | CABOT PIPELINE CO   |
| 8141989                             | F-10-035511 | 4217900000 | 108 GRAY #7 02920              | PANHANDLE-GRAY           | 11.0  | CABOT PIPELINE CO   |
| 8141988                             | F-10-035509 | 4217900000 | 108 GRAY #9 02920              | PANHANDLE-GRAY           | 11.0  | CABOT PIPELINE CO   |
| -OLSEN ENERGY INC                   |             |            |                                |                          |       |                     |
| 8142077                             | F-08-036837 | 4249531223 | 103 RECEIVED: 07/17/81         | HENDERSON                | 45.7  | EL PASO NATURAL GAS |
| -ONG EXPLORATION INC                |             |            |                                |                          |       |                     |
| 8142006                             | F-10-036208 | 4220530786 | 103 RECEIVED: 07/17/81         | DARREN (MORROW MIDDLE)   | 36.0  | NORTHERN NATURAL    |
| -PETRO-LEWIS CORPORATION            |             |            |                                |                          |       |                     |
| 8142075                             | F-08-036826 | 4210332440 | 103 RECEIVED: 07/17/81         | SAND HILLS               | 57.5  | WARREN PETROLEUM    |
| -PETROLERO EXPLORATIONS INC         |             |            |                                |                          |       |                     |
| 8142074                             | F-7C-036815 | 4239931653 | 103 RECEIVED: 07/17/81         | CHAYO (GARDNER LOWER)    | 3.6   | UNION TEXAS PETRO   |
| 8142073                             | F-7C-036814 | 4239931736 | 102-4 YATES A #1 10-08624      | OUTLAWS (GOEN REEF)      | 21.9  | BALDRIDGE VAPOR R   |
| -PETROMARK MINERALS INC             |             |            |                                |                          |       |                     |
| 8141858                             | F-03-025527 | 4214930440 | 102-2 ARNIM A NO 1             | GIDDINGS (AUSTIN CHALK)  | 257.0 | CLAJON GAS CO       |
| 8141858                             | F-03-025527 | 4214930440 | 103 ARNIM A NO 1               | GIDDINGS (AUSTIN CHALK)  | 257.0 | CLAJON GAS CO       |
| -PHILLIPS PETROLEUM COMPANY         |             |            |                                |                          |       |                     |
| 8141877                             | F-10-028549 | 4217900000 | 108 RECEIVED: 07/17/81         | PANHANDLE GRAY           | 10.8  | GETTY OIL CO        |
| -PIONEER PRODUCTION CORPORATION     |             |            |                                |                          |       |                     |
| 8141929                             | F-10-031965 | 4229500000 | 108 RECEIVED: 07/17/81         | NAMPOTH CREEK NORTH/CLEV | 0.0   | NORTHERN NATURAL    |
| 8141969                             | F-10-034921 | 4229530572 | 103 J K MUGG ESTATE #2-583     | NAMPOTH CREEK NORTH (CLE | 0.0   | NORTHERN NATURAL    |
| -PITTS OIL CO & DALLAS PROD INC     |             |            |                                |                          |       |                     |
| 8142027                             | F-08-036527 | 4213331553 | 103 RECEIVED: 07/17/81         | SCOTTVILLE SW (PAGE)     | 300.0 | ARKANSAS LOUISIAN   |
| -POLK & PATTON INC                  |             |            |                                |                          |       |                     |
| 8141975                             | F-7B-035242 | 4236700000 | 108 RECEIVED: 07/17/81         | TOTC (STRAWN)            | 14.1  | SOUTHWESTERN GAS    |
| -R L KIRKWOOD JR                    |             |            |                                |                          |       |                     |
| 8141862                             | F-02-026233 | 4217531316 | 103 RECEIVED: 07/17/81         | ENKE MIOCENE (2100)      | 51.0  | UNITED GAS PIPE L   |
| -R LACY INC                         |             |            |                                |                          |       |                     |
| 8141950                             | F-06-033458 | 4236500000 | 108 RECEIVED: 07/17/81         | CARTHAGE (UPPER PETTIT)  | 10.0  | NATURAL GAS PIPE    |
| 8141943                             | F-06-033329 | 4220300000 | 108 HOLT UNIT #1 RRC #29758    | WASKOM (COTTON VALLEY)   | 15.0  | ARKANSAS LOUISIAN   |
| -REPUBLIC GAS GATHERING SYSTEMS INC |             |            |                                |                          |       |                     |
| 8141979                             | F-7B-035400 | 4204900000 | 108 VERHALEN WELL #6 RRC 82869 | BROWN COUNTY REG (MARBLE | 10.0  | HARBIN GAS GATHER   |
| 8141980                             | F-7B-035402 | 4204900000 | 108 MAYBEE NO 1                | SANCESON (ELLEBERGER)    | 46.0  | HARBIN GAS GATHER   |
| -ROCKWOOD RESOURCES INC             |             |            |                                |                          |       |                     |
| 8141867                             | F-06-026955 | 4236530725 | 108 SANDERSON NO 1             | CARTHAGE S (COTTON VALLE | 0.0   | UNITED GAS PIPELI   |
| -S A C OIL & GAS INC                |             |            |                                |                          |       |                     |
| 8141958                             | F-7B-034413 | 4205932882 | 103 RECEIVED: 07/17/81         | FREDDA (DUFFER LIME)     | 730.0 | ODESSA NATURAL CO   |
| -SAGE ENERGY CO                     |             |            |                                |                          |       |                     |
| 8142061                             | F-03-036793 | 4214930858 | 102-3 MULDOON #1 RRC #14022    | GIDDINGS (AUSTIN CHALK)  | 41.0  | FALCON GAS CO       |
| -SAMSON RESOURCES COMPANY           |             |            |                                |                          |       |                     |
| 8141863                             | F-03-026500 | 4223700000 | 108 RECEIVED: 07/17/81         | BOONESVILLE              | 7.3   | SOUTHWESTERN GAS    |



PAGE 508

VOLUME 485

| JD NO   | JALAT       | API NO     | D SFC CAT WELL NAME              | RECEIVED | DATE  | FIELD NAME                | PROD  | PURCHASER         |
|---------|-------------|------------|----------------------------------|----------|-------|---------------------------|-------|-------------------|
| 8142109 | F-78-036945 | 4244131636 | 103 ERNEST MAYFIELD #1 (16953)   | 07/17/81 | JALAT | TAYLOR COUNTY REGULAR     | 9.0   | FORT CHADBOURNE C |
| 8142110 | F-78-036943 | 4215131170 | 103 HUGHES #1 (16879)            | 07/17/81 | JALAT | WICKHAM (PALO PINTO)      | 8.0   | PALO DURO PIPELIN |
| 8142111 | F-78-036946 | 4225331255 | 103 M MAYFIELD #1 (15382)        | 07/17/81 | JALAT | MIDDLESTON (STRAWN SAND)  | 73.0  | PALO DURO PIPELIN |
| 8142108 | F-78-03694  | 4215131068 | 103 SMITH #1 (15848)             | 07/17/81 | JALAT | MIDDLE N W (CANYON SD #1) | 52.0  | PALO DURO PIPELIN |
| 8142086 | F-78-036900 | 4242980000 | 103 I P ROBERTSON #1 - ID #15225 | 07/17/81 | JALAT | CRYSTAL FALLS E (CONGL)   | 24.0  | GREAT WESTERN GAS |
| 8141964 | F-10-034785 | 4217900000 | 103 SHARON #1                    | 07/17/81 | JALAT | PANHANDLE GRAY COUNTY FI  | 285.0 | CABOT PIPELINE CO |
| 8142028 | F-04-036420 | 4242731445 | 103 FARLEY-STATE NO 1            | 07/17/81 | JALAT | SUN                       | 5.0   |                   |
| 8141992 | F-08-030071 | 4246131564 | 103 NORTH CROSS (DEV)            | 07/17/81 | JALAT | CROSSETT (DEVONIAN)       | 768.6 | SHELL OIL CO      |
| 8141316 | F-78-031331 | 4236332479 | 102-4 STEWART #2 (91855)         | 07/17/81 | JALAT | MCCLISH-STONE             | 180.0 | TEXAS UTILITIES F |
| 8141916 | F-78-031331 | 4236332479 | 103 STEWART #2 (91855)           | 07/17/81 | JALAT | MCCLISH-STONE             | 180.0 | TEXAS UTILITIES F |
| 8141978 | F-02-035347 | 4202531451 | 103 ALLEN HANUS 1-C              | 07/17/81 | JALAT | SLIVA (2800)              | 6.1   | GULF STATES EQUIT |
| 8142044 | F-10-036721 | 4217930818 | 103 ANDERSON #1 C4686            | 07/17/81 | JALAT | PANHANDLE                 | 72.0  | CABOT PIPELINE CO |
| 8142045 | F-10-036722 | 4217930816 | 103 ANDERSON #3 C4686            | 07/17/81 | JALAT | PANHANDLE GRAY COUNTY FI  | 72.0  | CABOT PIPELINE CO |
| 8142037 | F-03-036692 | 4205130870 | 102-2 F J BEDNAR #1              | 07/17/81 | JALAT | GIDDINGS (AUSTIN CHALK)   | 0.0   | CLAJON GAS CO     |
| 8142009 | F-03-036290 | 4203931661 | 103 TURNER NO 1                  | 07/17/81 | JALAT | BONNEY (FRIO A UPPER)     | 112.0 | CHANNEL INDUSTRIE |
| 8142116 | F-78-036976 | 4235331051 | 102-4 GERTRUDE WITHERS #5        | 07/17/81 | JALAT | WITHERS                   | 3.0   | PALO DURO PIPELIN |
| 8142117 | F-8A-036978 | 4221933030 | 103 O A HEATH #7                 | 07/17/81 | JALAT | LEVELLAND                 | 5.4   | AMOCO PRODUCTION  |
| 8141865 | F-04-026663 | 4224900000 | 108 SEELIGSON UNIT NO 14-5       | 07/17/81 | JALAT | SEELIGSON                 | 22.4  | TENNESSEE GAS PIP |
| 8141922 | F-04-031689 | 4247932823 | 102-2 DANIEL FLORES WELL NO 3    | 07/17/81 | JALAT | SCHWARZ                   | 0.0   |                   |
| 8141922 | F-04-031689 | 4247932823 | 103 DANIEL FLORES WELL NO 3      | 07/17/81 | JALAT | SCHWARZ                   | 0.0   |                   |
| 8141891 | F-03-029306 | 4228730736 | 102-2 EDMON-CAMERON WELL NO 3    | 07/17/81 | JALAT | GIDDINGS (AUSTIN CHALK)   | 360.0 | PHILLIPS PETROLEU |
| 8142022 | F-09-036492 | 4250300000 | 103 BRATCHER #1                  | 07/17/81 | JALAT | REEVES (MARBLE FALLS)     | 73.0  | SUN GAS TRANSMISS |
| 8141847 | F-03-021425 | 4247700000 | 102-4 PRUEGER NO 1               | 07/17/81 | JALAT | GIDDINGS (AUSTIN CHALK G  | 200.0 | CLAJON GAS CO     |
| 8141839 | F-03-014778 | 4215730959 | 102-4 WALZEL-BLAZEL NO 1         | 07/17/81 | JALAT | TAVENER (FRIO 3900)       | 186.0 | LONE STAR GAS CO  |
| 8142058 | F-8A-036772 | 4216531842 | 103 BRANCH B #2                  | 07/17/81 | JALAT | NORTH ROBERTSON           | 1.8   | PHILLIPS PETROLEU |
| 8142057 | F-8A-036771 | 4216531843 | 103 BRANCH C #1                  | 07/17/81 | JALAT | NORTH ROBERTSON           | 52.2  | PHILLIPS PETROLEU |
| 8141915 | F-08-031326 | 4222700000 | 103 FRYAR #1                     | 07/17/81 | JALAT | BIG SPRING (FUSSELMAN)    | 50.0  | GETTY OIL CO      |
| 8141959 | F-05-034445 | 4216130533 | 107-TF GILLIAM #2-1              | 07/17/81 | JALAT | PERSONVILLE NE (COTTON V  | 0.0   | LONE STAR GAS CO  |
| 8141893 | F-10-029393 | 4235700000 | 103 MILLER T #1                  | 07/17/81 | JALAT | CRESY (DES MOINES)        | 7.3   | PHILLIPS PETROLEU |
| 8141934 | F-06-032522 | 4226300000 | 108 BARKER-MANNING GAS UNIT #1   | 07/17/81 | JALAT | BLOCKER                   | 17.0  | UNITED GAS PIPE L |
| 8141870 | F-7C-027885 | 4238300000 | 103 TEXAS Y #10                  | 07/17/81 | JALAT | PRICE/GRAYBURG            | 3.7   | BIG LAKE GASOLINE |
| 8141861 | F-06-025973 | 4240130829 | 102-3 R T BALLENGER NO 1         | 07/17/81 | JALAT | WILLCAT ABOVE 10930 FEET  | 182.5 | DELHI GAS PIPELIN |
| 8142053 | F-02-036760 | 4246931610 | 102-4 VAN LOH GAS UNIT (93071)   | 07/17/81 | JALAT | WEBER (FRIO 3170)         | 150.0 | DELHI GAS PIPELIN |







VOLUME 485

PAGE 610

| JD NO                      | JA LKT | API NO     | D SEC CAT | WELL NAME                  | FIELD NAME       | PRCD             | PURCHASER         |
|----------------------------|--------|------------|-----------|----------------------------|------------------|------------------|-------------------|
| 8142140                    |        | 4704102964 | 103       | G BUTLER #2B               | LITTLE COVE      | 40.0             | CONSOLIDATED GAS  |
| 8142128                    |        | 4702103705 | 103       | G BUTLER #3B               | LITTLE COVE      | 40.0             | CONSOLIDATED GAS  |
| 8142125                    |        | 4701702665 | 103       | M SCHMIDT #2               | ST CLAIR         | 40.0             | CONSOLIDATED GAS  |
| 8142141                    |        | 4704102965 | 103       | VALENTINE #1B              | LITTLE COVE      | 30.0             | CONSOLIDATED GAS  |
| -FOX DRILLING CO INC       |        |            |           |                            |                  |                  |                   |
| 8142136                    |        | 4700101362 | 103       | RECEIVED: 07/17/81         | BELINGTON FIELD  | 10.0             | COLUMBIA GAS TRAN |
| 8142133                    |        | 4700101423 | 103       | BARREUR COUNTY BC CF EC #3 | BELINGTON FIELD  | 15.0             | COLUMBIA GAS TRAN |
| 8142134                    |        | 4700101429 | 103       | BURNER #1                  | BELINGTON FIELD  | 12.0             | COLUMBIA GAS TRAN |
| -SWIFT ENERGY CO           |        |            |           |                            |                  |                  |                   |
| 8142129                    |        | 4702103712 | 107       | RECEIVED: 07/17/81         | GLENNVILLE NORTH | 50.0             | COLUMBIA GAS TRAN |
| 8142137                    |        | 4702103714 | 107       | DV BURKE NO 1              | GLENNVILLE NORTH | 50.0             | COLUMBIA GAS TRAN |
| -UNITED STATES ENERGY CORP |        |            |           |                            |                  |                  |                   |
| 8142121                    |        | 4702102555 | 108       | RECEIVED: 07/17/81         | 5.0              | CONSOLIDATED GAS |                   |
| 8142126                    |        | 4702102474 | 108       | J B VARNER E-1             | 3.0              | CONSOLIDATED GAS |                   |
| OTHER PURCHASERS           |        |            |           |                            |                  |                  |                   |
| 8141953                    |        |            |           | JOHN S STEELE-I            |                  |                  |                   |
| 8141954                    |        |            |           |                            |                  |                  |                   |
| 8141974                    |        |            |           |                            |                  |                  |                   |
| 8142052                    |        |            |           |                            |                  |                  |                   |
| 8142051                    |        |            |           |                            |                  |                  |                   |
| 8142052                    |        |            |           |                            |                  |                  |                   |
| 8142073                    |        |            |           |                            |                  |                  |                   |
| 8142092                    |        |            |           |                            |                  |                  |                   |

8141953 E I DUPONT DE NEMOURS & CO INC  
 8141954 E I DUPONT DE NEMOURS & CO INC  
 8141974 COLUMBIA GAS TRANSMISSION  
 8142052 E I DUPONT DE NEMOURS & CO INC  
 8142051 LONE STAR GAS CO  
 8142052 LONE STAR GAS CO  
 8142073 UNION TEXAS PETROLEUM CORP  
 8142092 LONE STAR GAS CO

BILLING CODE 8455-85-C



The above notices of determination were received from the indicated jurisdictional agencies by the Federal Energy Regulatory Commission pursuant to the Natural Gas Policy Act of 1978 and 18 CFR 274.104. Negative determinations are indicated by a "D" before the section code. Estimated annual production (PROD) is in million cubic feet (MMCF). An (\*) before the Control (JD) number denotes additional purchasers listed at the end of the notice.

The applications for determination are available for inspection except to the extent such material is confidential under 18 CFR 275.206, at the Commission's Division of Public Information, Room 1000, 825 North Capitol St., Washington, D.C. Persons objecting to any of these determinations may, in accordance with 18 CFR 275.203 and 275.204, file a protest with the Commission on or before August 31, 1981.

Categories within each NGPA section are indicated by the following codes:

- Section 102-1: New OCS lease
- 102-2: New well (2.5 mile rule)
- 102-3: New well (1000 ft rule)
- 102-4: New onshore reservoir
- 102-5: New reservoir on old OCS lease
- Section 107-DP: 15,000 feet or deeper
- 107-GB: Geopressured brine
- 107-CS: Coal seams
- 107-DV: Devonian shale
- 107-PE: Production enhancement
- 107-TF: New tight formation
- 107-RT: Recompletion tight formation
- Section 108: Stripper well
- 108-SA: Seasonally affected
- 108-ER: Enhanced recovery
- 108-PB: Pressure buildup

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-23758 Filed 8-13-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ID-1905-000]

#### Myron DuBain; Petition and Application

August 10, 1981.

The filing individual submits the following:

Take notice that on July 29, 1981, Myron DuBain filed a petition for issuance of a declaratory order determining that Fireman's Fund Insurance Company is not a firm authorized by law to underwrite or participate in the marketing of securities of a public utility within the meaning of section 305(b) of the Federal Power Act and thus that the holding of the positions of director of the Pacific Gas

and Electric Company and director of the Fireman's Fund Insurance Company does not fall within the purview of section 305(b) of the Federal Power Act.

In the alternative, also on July 29, 1981, Myron DuBain filed an application pursuant to section 305(b) of the Federal Power Act to hold the following positions:

- Pacific Gas and Electric Company
- Director
- American Express Company
- Director, Vice Chairman—Board of Directors
- Fireman's Fund Insurance Company
- Director, Chairman—Board of Directors, Chief Executive Officer, President

Any person desiring to be heard or to protest said petition should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before September 1, 1981. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this petition are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-23755 Filed 8-13-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. TA81-2-33-004]

#### El Paso Natural Gas Co.; Tariff Filing

August 7, 1981.

Take notice that on July 15, 1981, El Paso Natural Gas Company ("El Paso") tendered for filing, pursuant to Part 154 of the Federal Energy Regulatory Commission ("Commission") Regulations Under the Natural Gas Act and in compliance with ordering paragraph (B) of the Commission's "Order Directing Pipelines to Cease Collection of the First Use Tax From Their Customers, Terminating Tracking of the First Use Tax and Requiring the Filing of Revised Rate Tariff Sheets" issued June 29, 1981 in the proceedings of Arkansas Louisiana Gas Company, *et al.*, at Docket No. TA81-2-31, *et al.* the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1, Third Revised Volume No. 2 and Original Volume No. 2A:

#### Original Volume No. 1

Twenty-eight Revised Sheet No. 3-B

Second Revised Sheet No. 68-B

Third Revised Volume No. 2

Nineteenth Revised Sheet No. 1-D

#### Original Volume No. 2A

Twentieth Revised Sheet No. 1-C

El Paso states that the tendered tariff sheets, when accepted for filing and permitted to become effective, will (i) eliminate from El Paso's Statement of Rates pursuant to the Commission's directive the current adjustment of 0.09¢ for the Louisiana First-Use Tax ("LFUT"); (ii) adjust the surcharge rate for the net decrease of 0.01¢ per Mcf inasmuch as El Paso has determined that as of June 1, 1981 El Paso has overcollected the LFUT from its customers, by approximately \$33,000; and (iii) delete Section 22, Louisiana First-Use Tax Tracking Provision, contained in the General Terms and Conditions of said Original Volume No. 1 Tariff since such section is no longer appropriate.

Ordering paragraph (B) of the Commission's order stated that upon Commission review, the revised tariff sheets would be made effective May 1, 1981. Therefore, El Paso requests that waiver be granted of all applicable rules, orders and regulations of the Commission, as may be deemed necessary, to permit the revised tariff sheets described herein to become effective May 1, 1981 as reflected in the Commission's order issued June 29, 1981.

El Paso further states that copies of the instant tender have been served upon all parties of record in Docket No. TA81-2-33, and, otherwise, upon all interstate pipeline system customers of El Paso and interested state regulatory commissions.

Any person desiring to be heard or to make any protest with reference to said tariff filing should, on or before August 14, 1981, file with the Federal Energy Regulatory Commission, Washington, D.C., 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations Under the Natural Gas Act (18 CFR 157.10). Protest filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make any protestants parties to the proceeding. Any person wishing to become a party to a proceeding must file a petition to intervene in accordance with the Commission's Rules. Copies of this filing



are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 81-23696 Filed 8-13-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. RP81-94-000]

#### El Paso Natural Gas Co.; Tariff Filing

August 6, 1981.

Take notice that on July 22, 1981, El Paso Natural Gas Company ("El Paso") tendered for filing, pursuant to Part 154 of the Federal Energy Regulatory Commission ("Commission") Regulations Under the Natural Gas Act the following revised and original tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Third Revised Sheet No. 57  
Sixth Revised Sheet No. 58  
Original Sheet No. 58-A

El Paso states that the tendered tariff sheets when accepted for filing and permitted to become effective will modify certain provisions currently contained in Section 8, Payments, of the General Terms and Conditions of said Original Volume No 1 Tariff. El Paso proposes to modify the Payments provisions in order to (i) specify the date payments are due depending upon the method a customer makes payment (i.e. wire transfer, check, etc.), and (ii) provide for a late charge applicable to delinquent bills and an interest rate applicable to overcharges equivalent to two percent (2%) above the then effective prime commercial lending rate per annum set by The Chase Manhattan Bank (N.A.), provided that for any period that such late charge or interest rate exceeds any applicable maximum rate permitted by law, the rate applied shall equal said applicable maximum rate.

El Paso requests that the Commission accept the tendered tariff sheets for filing and grant such waivers of the Commission's Regulations as may be necessary to permit the tariff sheets to become effective August 25, 1981.

El Paso further states that copies of the instant tender have been served upon all interstate pipeline system customers of El Paso and interested state regulatory commissions.

Any person desiring to be heard or to make any protest with reference to said tariff filing should, on or before Aug. 14, 1981, file with the Federal Energy Regulatory Commission, Washington, D.C., 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or

1.10) and the Regulations Under the Natural Gas Act (18 CFR 157.10). Protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make any protestants parties to the proceeding. Any person wishing to become a party to a proceeding must file a petition to intervene in accordance with the Commission's Rules. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,  
Acting Secretary.

[FR Doc. 81-23675 Filed 8-13-81; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 5028-000]

#### Energenics Systems, Inc.; Application for Preliminary Permit

August 10, 1981.

Take notice that Energenics Systems, Inc. (Applicant) filed on June 30, 1981, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)-825(r)] for Project No. 5028 known as the Mill Creek Dam Project located on Mill Creek in Walla Walla County, Washington. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Thomas H. Clarke, Jr., President, Energenics Systems, Inc., 1727 Q Street, N.W., Washington, D.C. 20009.

**Project Description**—The proposed project would consist of: (1) a powerhouse containing one generating unit rated at 750 kW to be located at the outlet works of the existing U.S. Army Corps of Engineers' 145-foot high Mill Creek Dam; and (2) a transmission line. The Applicant estimates that the average annual energy output would be 9.2 million kWh.

**Proposed Scope of Studies Under Permit**—A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months, during which time it would conduct engineering, environmental, economic, and feasibility studies, and prepare an FERC license application. No new roads will be required to conduct the studies. The cost of the work to be performed under the preliminary permit is estimated to be \$30,000.

**Competing Applications**—Anyone desiring to file a competing application must submit to the Commission, on or before October 15, 1981, either the competing application itself [See 18 CFR § 4.33(a) and (d)(1980)] or a notice of

intent [See 18 CFR § 4.33(b) and (c)(1980)] to file a competing application. Submission of a timely notice of intent allows an interested person to file an acceptable competing application no later than the time specified in § 4.33(c).

**Agency Comments**—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

**Comments, Protests, or Petitions To Intervene**—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protest, or petition to intervene must be received on or before October 15, 1981.

**Filing and Service of Responsive Documents**—Any filings must bear in all capital letters the title "COMMENTS," "NOTICE OF INTENT TO FILE A COMPETING APPLICATION," "PROTEST," or "PETITION TO INTERVENE," as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 81-23674 Filed 8-13-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP81-415-000]

#### Equitable Gas Co.; Application

August 7, 1981.

Take notice that on July 13, 1981, Equitable Gas Company (Applicant), 420 Boulevard of the Allies, Pittsburgh,



Pennsylvania 15219, filed in Docket No. CP81-415-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of a main-line tap and meter installation on its Field Line No. F-821 and the transportation of natural gas to serve NRM Petroleum Corporation (NRM) located in Upshur County, West Virginia, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that NRM has applied to Applicant for natural gas service exclusively for space heating to its premises and would require approximately 700 Mcf per year. Applicant further states that the proposed service would be off Applicant's Field Line No. F-821 located in Lorentz, Upshur County, West Virginia. Applicant proposes service to NRM for a period of ten years and from year to year thereafter.

Applicant estimates the cost of the proposed tap to be \$1,000 which would be financed from cash on hand.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 28, 1981, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if

the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 81-23723 Filed 8-13-81; 8:45 am]

BILLING CODE 6450-85-M

#### [Docket No. ER81-648-000]

#### Florida Power & Light Co.; Filing

August 7, 1981.

The filing Company submits the following:

Take notice that on August 3, 1981, Florida Power & Light Company (FP&L) tendered for filing three (3) Exhibits A, two of which provide for revised Contract Demands of an existing Delivery Point, and the third which provides for the establishment of a new Delivery Point to the City of Starke, Florida.

The proposed effective dates for the two Contract Demands at the existing Delivery Point are: one effective as of March 1, 1981 through July 30, 1981; the other effective as of July 30, 1981 through February 28, 1982.

The proposed effective date for the new Delivery Point, to be served under FP&L's Rate Schedule SR-2, is July 30, 1981.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before August 28, 1981. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 81-23724 Filed 8-13-81; 8:45 am]

BILLING CODE 6450-85-M

#### [Project No. 4967-000]

#### David Frey et al.; Application for Preliminary Permit

August 10, 1981.

Take notice that David Frey, Paul Weir, Leo Horvath, Joseph Horvath, and Herbert Frey, (Applicant) filed on June 2, 1981, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)-825(r)] for Project No. 4967-000 known as the Pennsylvania Low Head No. 1 Project located on Wapwallopen Creek in Luzerne County, Pennsylvania. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Leo Horvath, 7025 Benjamin St., McLean, Virginia 22104.

**Project Description**—The project would consist of the following existing works: (1) An existing 30-foot-high stone dam. The dam is owned by Mrs. E. C. Hunter, Mrs. William Lance, Mrs. Raymond McPherson, and Mrs. Jacques Applemans; (2) a reservoir having negligible storage capacity; (3) a race constructed in the natural rock formation on the south side of the dam, which feeds water into a 4-foot-diameter riveted iron pipe; (4) a powerhouse located adjacent to the dam; and (5) appurtenant works.

The Applicant proposes to rehabilitate the existing facilities, and to install a turbine and generator with a total installed generating capacity of 1800 kW. The Applicant estimates that the average annual generation would be 7,500,000 kWh.

**Proposed Scope of Studies Under Permit**—A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of three years, during which time Applicant would investigate the power generation, construction, economic, environmental, historic, and recreational aspects of the project. Depending upon the outcome of the studies, the Applicant would decide how to proceed with further environmental studies, project designs, and an application for a FERC license. The Applicant estimates the cost of studies under the permit would be \$5,000.

**Competing Applications**—Anyone desiring to file a competing application must submit to the Commission, on or before October 15, 1981, either the competing application itself [See 18 CFR § 4.33(a) and (d) (1980)] or a notice of intent [See 18 CFR § 4.33(b) and (c) (1980)] to file a competing application. Submission of a timely notice of intent



allows an interested person to file an acceptable competing application no later than the time specified in § 4.33(c).

**Agency Comments—**Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant). If an agency does not file comments within the time set below, it will be presumed to have no comments.

**Comments, Protests, or Petitions To Intervene—**Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protest, or petition to intervene must be received on or before October 15, 1981.

**Filing and Service of Responsive Documents—**Any filings must bear in all capital letters the title "COMMENTS," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATION," "PROTEST," or "PETITION TO INTERVENE," as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 81-23676 Filed 8-13-81; 8:45 am]  
BILLING CODE 6450-85-M

#### [Project No. 4533]

#### City of Gillette, Wyoming; Application for Preliminary Permit

August 11, 1981.

Take notice that the City of Gillette (Applicant) filed on April 14, 1981, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a) 825(r)] for Project No. 4533

known as the Pilot Butte Power Project located at the U.S. Water & Power Resources Service's Pilot Butte Power Plant on the Wyoming Canal, Fremont County, Wyoming. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Paul G. Schamp, P.E., Electrical Engineer, City of Gillette, P.O. Box 3003, Gillette, Wyoming 82716.

**Project Description—**The proposed project would consist of the replacement of the power generation equipment and reconditioning of the existing facilities at the non-operating Pilot Butte Power Plant. The Applicant proposes to recondition the power plant with an installed capacity of 1,885 kW and estimates that the average annual generation would be 8,727,000 kWh. It is the intent of the Applicant to sell the electric power produced to a public or private utility.

**Proposed Scope of Studies Under Permit—**A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of 36 months, during which time studies would be carried out to determine the feasibility of the project and support an application for licensing. The studies would include engineering, hydrological, environmental and financial investigations, as well as consultation with interested governmental agencies. The cost of Applicant's studies are estimated to be approximately \$100,000.

**Competing Applications—**Anyone desiring to file a competing application must submit to the Commission, on or before July 20, 1981, either the competing application itself [See 18 CFR § 4.33(a) and (d)(1980)] or a notice of intent [See 18 CFR § 4.33(b) and (c)(1980)] to file a competing application. Submission of a timely notice of intent allows an interested person to file an acceptable competing application no later than September 18, 1981.

**Agency Comments—**Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies only directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

**Comments, Protests, or Petitions To Intervene—**Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to

intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protest, or petition to intervene must be received on or before September 11, 1981.

**Filing and Service of Responsive Documents—**Any filings must bear in all capital letters the title "COMMENTS," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATION," "PROTEST," or "PETITION TO INTERVENE," as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 81-23686 Filed 8-13-81; 8:45 am]  
BILLING CODE 6450-85-M

#### [Docket No. RP81-97-000]

#### Great Lakes Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

August 7, 1981.

Take notice that on July 31, 1981, Great Lakes Gas Transmission Company ("Great Lakes") tendered for filing proposed changes to the following tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1 and Original Volume No. 2.

**First Revised Volume No. 1**  
Eleventh Revised Sheet No. 4  
Fortieth Revised Sheet No. 57  
**Original Volume No. 2**  
Seventeenth Revised Sheet No. 53  
Eighth Revised Sheet No. 77  
Second Revised Sheet No. 183  
Second Revised Sheet No. 223  
Second Revised Sheet No. 245  
First Revised Sheet No. 294

The proposed tariff changes would produce increased revenues of \$13,621,208 based on sales and transportation volumes for the base period (twelve months ended April 30, 1981) as adjusted. The changes would also establish new Base Tariff Rates for future purchased gas adjustments.



Great Lakes states that the proposed rates are necessary because of increased operating expenses, increased depreciation expense resulting from increased plant in service, increased *ad valorem* and other taxes and increased return and income tax requirements. Great Lakes' proposed rates include an overall return of 13.13 percent reflecting its increased imbedded debt cost of 10.85 percent and a return on equity of 16.75 percent.

Great Lakes further states that copies of this filing have been served upon its customers and the Public Service Commissions of Minnesota, Wisconsin and Michigan.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed before August 19. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 81-23677 Filed 8-13-81; 8:45 am]  
BILLING CODE 6450-85-M

#### [Docket No. RP81-18]

##### High Island Offshore System; Settlement Conference

August 10, 1981.

Take notice that on August 25, 1981, at 9:30 a.m., a settlement conference of all interested parties will be convened concerning the issues involved in the above-referenced proceeding. All parties should come prepared to discuss all issues pertaining to rate design including issues associated with separation and transportation of liquids and liquefiables. The conference will be held in a room to be designated for such purposes at the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 81-23762 Filed 8-13-81; 8:45 am]  
BILLING CODE 6450-85-M

#### [Docket No. ID-1740-000]

##### Warren A. Hunt; Application

August 7, 1981.

The filing individual submits the following:

Take notice that on July 28, 1981, Warren A. Hunt filed an application pursuant to Section 305(b) of the Federal Power Act to hold the following positions:

Connecticut Light and Power Company  
Vice President  
Holyoke Water Power Company  
Vice President  
Western Massachusetts Electric Company  
Vice President  
Hartford Electric Light Company  
Vice President  
Holyoke Power and Electric Company  
Vice President

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before August 31, 1981. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 81-23709 Filed 8-13-81; 8:45 am]  
BILLING CODE 6450-85-M

#### [Docket No. ER81-652-000]

##### Idaho Power Co.; Filing

August 10, 1981.

The filing Company submits the following:

Take notice that on July 31, 1981, the Idaho Power Company tendered for filing in compliance with the Federal Energy Regulatory Commission's Order of October 7, 1978, a summary of sales made under the Company's 1st Revised FERC Electric Tariff, Volume No. 1 (Supersedes Original Volume No. 1) during June, 1981, along with cost justification for the rate charged.

Any person desiring to be heard or to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the

Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before August 28, 1981. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 81-23763 Filed 8-13-81; 8:45 am]  
BILLING CODE 6450-85-M

#### [Docket No. ER81-654-000]

##### Illinois Power Co.; Filing

August 10, 1981.

The filing Company submits the following:

Take notice that on August 3, 1981, Illinois Power Company (Illinois Power) tendered for filing proposed Third Revised Service Schedule B to the Interconnection Agreement, dated February 18, 1972 between Central Illinois Public Service Company (CIPS), Union Electric Company (UE), and Illinois Power Company.

Illinois Power indicates that this filing is made for an increase in the minimum charge for Emergency Energy.

Illinois Power requests an effective date of October 1, 1981.

Illinois Power states that a copy of the filing was served upon CIPS, UE, the Illinois Commerce Commission, and the Missouri Public Service Commission.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before August 31, 1981. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 81-23764 Filed 8-13-81; 8:45 am]  
BILLING CODE 6450-85-M



[Docket No. ER81-643-000]

**Iowa Public Service Co.; Proposed Tariff Change**

August 7, 1981.

The filing Company submits the following:

Take notice that Iowa Public Service Company (Iowa) on July 30, 1981, tendered for filing proposed changes in its FERC Electric Service Tariff, Volume No. 1. The proposed changes would increase revenues in jurisdictional sales and service by \$938,264 based on the twelve-month period ending December 31, 1981.

The reasons for this increase in electric revenues are the current normal ones, namely the increased pressure of inflation and the cost of capital.

Iowa proposes an effective date of September 30, 1981.

Concurrently with the proposed tariff change, Iowa tendered for filing a motion requesting the Commission to issue an order suspending the effective date of the proposed rate increase for one day, from September 30, 1981 to October 1, 1981 and decide the merits of Iowa's application.

Copies of the filing were served upon the public utility jurisdictional customers and the Iowa State Commerce Commission.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before August 25, 1981. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 81-23710 Filed 8-13-81; 8:45 am]  
BILLING CODE 6450-85-M

[Project No. 4422-000]

**City of Kalispell, Montana; Application for Preliminary Permit**

August 11, 1981.

Take notice that the City of Kalispell (Applicant) filed on March 28, 1981, an application for preliminary permit pursuant to the Federal Power Act, 16

U.S.C. §§ 791(a)-825(r)) for proposed Project No. 4422 to be known as Gibson Dam and Sun River Diversion Hydropower Development located at the U.S. Water and Power Resource Service's Gibson and Sun River Diversion Dams on the Sun River in Teton, Lewis and Clark Counties, Montana. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Robert Grisley, 1485 South 300 West, Salt Lake City, Utah 84115. Any person who wishes to file a response to this notice should read the entire notice and must comply with the requirements specified for the particular kind of response that person wishes to file.

**Project Description**—The proposed project would utilize two U.S. Water and Power Resource Service dams. The project would consist of: (1) a proposed penstock and powerhouse at each dam; and (2) appurtenant facilities. The proposed powerhouse at Gibson Dam would have two generating units with a total capacity of 12.0 MW, and the powerhouse at Sun River Diversion Dam would have a single generating unit with a capacity of 4.5 MW.

The project facilities would be located on Federal lands.

The Applicant estimates that the combined average annual energy output would be 52.1 GWh.

**Purpose of Project**—The Applicant states that many users of power, have expressed an interest in the project. Likely purchasers of the project energy include the Montana Power Company, Bonneville Power Administration, a cooperative and utilities in the Pacific Northwest.

**Proposed Scope and Cost of Studies Under Permit**—The Applicant seeks issuance of a preliminary permit for a period of 24 months, during which time studies would be made to determine the engineering, environmental and economic feasibility of the project, including consultation and the preparation of a license application. The estimated cost of studies is \$51,000.

**Purpose of Preliminary Permit**—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other information necessary for inclusion in an application for a license.

**Agency Comments**—Federal, State, and local agencies that receive this

notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

**Competing Applications**—This application was filed as a competing application to Mitchell Energy Company, Inc., Project No. 3693 filed on November 7, 1980; Cook Electric Company, Project No. 3775 filed on November 21, 1980, Energenics Systems, Inc., Project No. 3792 filed on November 28, 1980, and Montana Renewable Resources, Inc., Project No. 3872 filed on December 16, 1980, under 18 CFR (1980), and, therefore, no further competing applications or notices of intent to file a competing application will be accepted for filing.

**Comments, Protests, or Petitions To Intervene**—Anyone desiring to be heard or to make any protests about this application should file a petition to intervene or a protest with the Commission, in accordance with the requirements of its Rules of Practice and Procedure, 18 CFR § 1.8 or § 1.10 (1980). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be received on or before September 11, 1981.

**Filing and Service of Responsive Documents**—Any comments, protests, or petitions to intervene must bear in all capital letters the title "COMMENTS," "PROTEST," or "PETITION TO INTERVENE," as applicable. Any of these filings must also state that it is made a response to this notice of application for preliminary permit for Project No. 4422. Any comments, protests, or petitions to intervene must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North



Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Room 208 RB Building, Washington, D.C. 20426. A copy of any petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 81-23687 Filed 8-13-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP81-430-000]

**Kansas-Nebraska Natural Gas Co., Inc.;  
Application**

August 7, 1981.

Take notice that on July 23, 1981, Kansas-Nebraska Natural Gas Company, Inc. (Applicant), P.O. Box 608, Hastings, Nebraska 68901, filed in Docket No. CP81-430-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the acquisition and operation of certain transmission pipeline and compression facilities, the construction and operation of certain transmission pipeline facilities, and certain sales of natural gas for resale in interstate commerce, all as more fully set forth in the application which is one file with the Commission and open to public inspection.

Specifically, Applicant proposes to acquire from Northern Utilities, Inc. (NUI) and operate the following facilities located west of Casper, Wyoming:

(a) Approximately 15.8 miles of 8-inch pipeline and appurtenant facilities commencing at Riverton Dome and extending to the Sand Draw Compression facilities;

(b) Segments of the North Line totaling approximately 35.8 miles of 16-inch pipeline and appurtenant facilities and consisting of the following pipeline: 10.7 miles between Sand Draw and mile post 30.2 and mile post 33.2, 10.0 miles between mile post 40 and mile post 50, and the 2.0 mile segment between mile post 54.7 and mile post 56.7 which is to be transferred in 1983;

(c) Segment of the North Line consisting of approximately 11.9 miles of 20-inch pipeline and appurtenant facilities commencing at mile post 72.2 and extending to mile post 84.1;

(d) Segment of the South Line consisting of approximately 20.0 miles of 20-inch pipeline and appurtenant

facilities commencing at mile post 84.1 and extending to mile post 104.1;

(e) Segment of the South Line consisting of approximately 1.3 miles of 16-inch pipeline and appurtenant facilities commencing at mile post 104.1 and extending to Applicant's Casper Plant located near mile post 105.4;

(f) 960 horsepower of compression, a desulfurization plant, and appurtenant facilities at Sand Draw, and;

(g) Segments of the South Line totaling approximately 36.4 miles of 16-inch pipeline and appurtenant facilities parallel to the segments of the North Line which have not been completed when the certificate authority requested herein is granted and consisting of the following: 6.3 miles between mile post 10.7 and mile post 17, 3.1 miles between mile post 27.1 and mile post 30.2, 6.8 miles between mile post 33.2 and mile post 40, 4.7 miles between mile post 50 and mile post 54.7, and 15.5 miles between mile post 56.7 and mile post 72.2, as well as the South Line segment between mile post 54.7 and mile post 56.7.

Applicant also proposes to construct and operate the following facilities west of Casper, Wyoming:

(a) Approximately 34.0 mile of 16-inch pipeline and 2.4 miles of 20-inch pipeline over a three-year period to fully complete the North Line from Sand Draw to mile post 84.1.

(b) Temporary pipeline facilities to interconnect segments of the South Line parallel to the segments of the North Line between Sand Draw and mile post 84.1 which have not been completed when the certificate authority requested herein is granted;

(c) Permanent interconnection of the North Line and South Line at mile post 84.1, and;

(d) Metering facilities at the sales-for-resale delivery points at Riverton Dome, Lost Cabin, Casper (two locations) and Sand Draw.

Applicant further proposes to make sales-for-resale in interstate commerce to Northern Gas Company (NGC) at Sand Draw and to NUI at Casper, Lost Cabin, Riverton Dome and one highline tap. It is submitted that the contract demand for NUI would be 9,300 Mcf of gas per day and for NGC would be 3,000 Mcf of gas per day.

Applicant estimates that the net cost of the facilities to be acquired would be \$7,181,358 while the total cost of the facilities to be constructed would be \$8,200,000 which costs would be financed with current working capital or intrin bank loans which at a later date may be funded through a security issue.

Any person desiring to be heard or to make any protest with reference to said application should on or before August

28, 1981, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 81-23725 Filed 8-13-81; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 2966-001]

**James C. Katsekas and Zoes J. Dimos;  
Application for Short-Form License  
(Minor)**

August 11, 1981.

Take notice that James C. Katsekas and Zoes J. Dimos (Applicant) filed on June 15, 1981, an application for license [pursuant to the Federal Power Act, 16 U.S.C. §§ 791(a)-825(r)] for construction and operation of a water power project to be known as the Clement Dam Project No. 2966. The project would be located on the Winnepesaukee River in Belknap and Merrimack Counties, New Hampshire. Correspondence with the Applicant should be directed to: Mr. Zoes J. Dimos, 209 Walnut Street, Manchester, New Hampshire 03103.



**Project Description**—The proposed run-of-river project would consist of: (1) a new concrete dam 9 feet high and approximately 80 feet long; (2) a 2.4-acre reservoir with approximately 8 acre-feet of storage capacity at normal water surface elevation of 432 feet m.s.l.; (3) a 200-foot long concrete flume; (4) a new powerhouse housing generating units with an installed capacity of 1,200 to 1,400 kW; and (5) appurtenant facilities.

The proposed Clement Dam Project would be located at the site of an existing breached dam and would use the original cut-granite dam abutments.

The application was filed during the term of the Applicant's preliminary permit for the Clement Dam Project, issued March 27, 1980.

**Purpose of Project**—Project energy would be sold by the Applicant to public utilities.

**Agency Comments**—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88-29, and other applicable statutes. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. If an agency does not file comments within the time set below, it will be presumed to have no comments.

**Competing Applications**—Anyone desiring to file a competing application must submit to the Commission, on or before October 15, 1981, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than February 12, 1982. A notice of intent must conform with the requirements of 18 CFR 4.33(b) and (c), (as amended 44 FR 61328, October 25, 1979). A competing application must conform with the requirements of 18 CFR, 4.33(a) and (d), (as amended, 44 FR 62328, October 25, 1979).

**Comments, Protests, or Petitions To Intervene**—Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and

Procedure, 18 CFR, § 1.8 or § 1.10 (1979). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be filed on or before October 15, 1981. The Commission's address is: 825 North Capitol Street, N.E., Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 81-23678 Filed 8-13-81; 8:45 am]  
BILLING CODE 8450-85-M

#### [Docket No. TA81-2-60-000]

##### Locust Ridge Gas Co.; Change in Rates

August 6, 1981.

Take notice that on July 28, 1981, Locust Ridge Gas Company (Locust Ridge) submitted for filing as part of it FERC Gas Tariff, Original Volume No. 3 the following tariff sheets to be effective September 1, 1981:

Sixth Revised Sheet No. 1A

Locust Ridge states the purpose of the filing is to submit, for approval by the Commission, a revision in Locust Ridge's rate to reflect proposed changes in the Purchased Gas Adjustment (PGA) component of Locust Ridge's rate for the period of September 1, 1981 thru February 28, 1982. The overall effect of the filed for adjustments to Locust Ridge's G-1 sales rate is a decrease of \$.0182.

Locust Ridge requests waiver of the Commission regulations to the extent, if any, required to put the proposed tariff sheets into effect on September 1, 1981.

A copy of this filing has been mailed to Locust Ridge's jurisdictional customers.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rule of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before Aug. 14, 1981. Protests will be

considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of the application are on file with the Commission and are available for public inspection.

Lois D. Cashell,  
Acting Secretary.

[FR Doc. 81-23711 Filed 8-13-81; 8:45 am]  
BILLING CODE 8450-85-M

#### [Docket No. ST81-344-000]

##### Louisiana Intrastate Gas Corp.; Application for Approval of Rates

August 11, 1981.

Take notice that on July 6, 1981, Louisiana Intrastate Gas Corporation (Applicant), P.O. Box 1352, Alexandria, Louisiana 71301, filed in Docket No. ST81-344-000 an application for approval of rates pursuant to Part 284 of the Commission's Regulations charged for the transportation of natural gas for the account of Trans Louisiana Gas Company, Inc. (Trans La), all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Applicant states that it and Trans La entered into a transportation agreement dated July 1, 1981, whereby Applicant would provide a transportation service for Trans La for a two-year period. It is further stated that under the agreement Applicant would accept gas from Trans La or for its account at specified points of interconnection and redeliver thermally equivalent volumes to Trans La for resale less Trans La's *pro rata* share of the volume of gas consumed as compressor fuel, company use and unaccounted for.

Applicant proposes a base transportation charge of 20.0 cents per million Btu of gas redelivered as a fair and equitable charge for the service rendered. Applicant asserts that this rate has been charged for comparable service performed by Applicant and was previously approved by the Commission in Docket Nos. ST79-22 through ST79-25.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 31, 1981, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in



determining the appropriate action to be taken but will not serve to make the protestants parties to a proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 81-23749 Filed 8-13-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP81-429-000]

**Michigan Gas Storage Co.; Application**

August 7, 1981.

Take notice that on July 23, 1981, Michigan Gas Storage Company (Applicant), 212 West Michigan Avenue, Jackson, Michigan 49201, filed in Docket No. CP81-429-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of a 6-inch tap valve in Ingham County, Michigan, and the transportation of natural gas for Consumers Power Company (Consumers Power), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to construct and operate a 6-inch tap valve on its 20-inch mainline in White Oak Township, Ingham County, Michigan, where it would receive gas from a new Consumers Power gas stripping plant. It is further submitted that the gas received at the proposed tap valve would then be transported through Applicant's mainline to Consumers Power's gas distribution system serving Williamston, Stockbridge and Lansing, Michigan.

The total cost of the proposed facilities is estimated to be \$17,000 which cost would be financed with internally generated funds and reimbursed by Consumers Power.

Applicant asserts that the proposed transportation service would be performed by displacement and there would be no transportation tariff as such; the same would be recovered by Applicant under its existing cost of service tariff with Consumers Power.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 28, 1981, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or

1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 81-23728 Filed 8-13-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP81-424-000]

**Michigan Wisconsin Pipe Line Co. and Great Lakes Gas Transmission Co.; Application**

August 7, 1981.

Take notice that on July 17, 1981, Michigan Wisconsin Pipe Line Company (Mich Wis), One Woodward Avenue, Detroit, Michigan 48226, and Great Lakes Gas Transmission Company (Great Lakes), 2100 Buhl Building, Detroit, Michigan 48226, filed in Docket No. CP-81-424-000 a joint application pursuant to Section 7 of the Natural Gas Act for permission and approval for Mich Wis to abandon by sale certain natural gas facilities and for a certificate of public convenience and necessity authorizing Great Lakes to acquire by purchase and operate those same facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Mich Wis proposes to abandon and Great Lakes proposes to acquire and operate a General Electric 12,000 horsepower Frame 3 gas turbine, centrifugal compressor unit (Frame 3) located at the site of Great Lakes' Compressor Station No. 8 near Crystal Falls, Michigan.

Applicants state that Mich Wis installed the Frame 3 in 1975 in order to increase the pressure of certain volumes of natural gas delivered by Great Lakes to Mich Wis at Great Lakes' Compressor Station No. 8 in order to meet the peak day requirements of Mich Wis' customers in Wisconsin. Since that time, it is further stated, Great Lakes has expanded its system upstream of Station No. 8 with the result that the prevailing discharge pressure at Station No. 8 renders use of the Frame 3 unnecessary.

Applicants assert that the acquisition of such compressor would provide spare horsepower at Station No. 8 and thereby increase the security of Great Lakes' system. It is further asserted that preferential use of the Frame 3 with its regenerator would increase the efficiency of Great Lakes' system and would save approximately 260,000 Mcf of fuel annually or a total of \$1,271,400 at \$4.89 per Mcf (Btu adjusted).

Applicants state that pursuant to an agreement dated July 7, 1981, the cost of acquiring the above-described facilities would be \$4,276,675 which would be financed by internally generated funds together with short-term lines of credit if necessary.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 28, 1981, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rule of Practice and Procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.70). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the



Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and permission and approval for the proposed abandonment are required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 81-23727 Filed 8-13-81; 8:45 am]  
BILLING CODE 6450-85-M

[Docket Nos. TA81-2-15-003 and TA81-1-15]

#### Mid Louisiana Gas Co.; Cancellation of Fifth Revised Sheet No. 3b

August 7, 1981.

Take notice that Mid Louisiana Gas Company (Mid Louisiana), on July 22, 1981, tendered for filing, as supplemented by a further filing tendered July 22, 1981, proposed changes in its FERC Gas Tariff, First Revised Volume No. 1.

The reason for the cancellation of Fifth Revised Sheet No. 3b is as follows. By order issued June 29, 1981 in *Arkansas Louisiana Gas Co., et al.*, Docket No. TA81-2-15, *et al.*, the Federal Energy Regulatory Commission directed certain pipeline companies, including Mid Louisiana, to file by July 15, 1981, revised rate tariff sheets which eliminate from their tariffs the current adjustment for the Louisiana First Use Tax.

In compliance with the Commission's order, Mid Louisiana proposes to cancel, subject to Commission review, Fifth Revised Sheet No. 3b contained in First Revised Volume No. 1 of its FERC Gas Tariff. On said page is set forth the Louisiana First Use Tax tracking surcharge and a Surcharge Adjustment; resulting in a (Louisiana First Use Tax) Rate After Adjustment. Since no other rate, charge, classification, service, rule, or contract relating thereto is contained on Fifth Revised Sheet No. 3b, no new tariff page is proposed to be filed in place of Sheet No. 3b. Therefore, Mid Louisiana proposes that the cancellation of Fifth Revised Sheet No. 3b become effective May 1, 1981, in accordance with the Commission's order of June 29, 1981.

Copies of the filing were served upon the company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before August 14, 1981. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 81-23697 Filed 8-13-81; 8:45 am]  
BILLING CODE 6450-85-M

[Docket No. CP81-428-000]

#### Mountain Fuel Supply Co.; Application

August 7, 1981.

Take notice that on July 22, 1981, Mountain Fuel Supply Company (Applicant), 180 East First South Street, Salt Lake City, Utah 84139, filed in docket No. CP81-428-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of four main line distribution gas sales taps, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to construct and operate four main line sales taps and appurtenances to effectuate the proposed delivery of gas to distribution customers. Applicant estimates that average annual sales during the first three years of service are expected to be approximately 76,000 Mcf. Applicant states that the total estimated cost for the proposed taps is \$87,929 which cost would be financed from funds on hand.

Applicant states that due to population growth in the town of Evanston, Wyoming, and the related increased demands on its distribution system, its distribution system to the north and southwest of Evanston and its existing distribution feeder line would soon have inadequate capacity to meet the firm requirements of present and future distribution customers. Applicant further states that the additional taps to serve Evanston would insure

dependable service by allowing for continued service if a main or feeder line required repair. Applicant estimates that within three years the four proposed taps would provide natural gas service to 625 firm residential and small commercial customers at an annual sales volume of 102,375 Mcf.

Applicant states that the proposed facilities would be located approximately 3.3 miles apart in Uinta County, Wyoming. It is stated that two 2-inch taps and associated facilities (Tap No. 1) would be located in Section 25, Township 15 North, Range 121 West, Uinta County, while two additional 2-inch taps and related facilities (Tap No. 2) would be located in Section 8, Township 15 North, Range 120 West, Uinta County.

Applicant states that it has supplies of natural gas in excess of its system requirements that it is willing to make available to existing and potential customers under the provisions of its Wyoming tariff and pursuant to the authority granted Applicant by the Public Service Commission of Wyoming. Applicant asserts that customers would be served on a firm basis under Applicant's Wyoming Rate Schedule GS-1.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 28, 1981, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition



for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 81-23079 Filed 8-13-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. TA81-2-26-001]

**Natural Gas Pipeline Company of America; Change in Rates**

August 6, 1981.

Take notice that on July 22, 1981, Natural Gas Pipeline Company of America (Natural) submitted for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the below listed tariff sheets to be effective September 1, 1981:

Second Substitute Forty-third Revised Sheet No. 5

Fourth Revised Sheet No. 5C

Fourth Revised Sheet No. 5D

Natural states the purpose of the filing is to reflect rate adjustments under the PGA and incremental pricing sections of Natural's tariff. The overall effect of the filing for adjustments in Natural's DMQ-1 rates is a decrease of \$0.01 in the demand component and an increase of 7.16¢ in the commodity component. Appropriate adjustments were also made to Natural's other sales rate schedules. The adjustments and annualized revenue increase, amounting to approximately \$63.4 million, are summarized below.

|                                | Rate schedule<br>DMQ-1 rate<br>adjustment | Annual-<br>ized<br>jurisdictional<br>revenue<br>increase<br>(decrease)<br>(millions<br>of dollars) |
|--------------------------------|-------------------------------------------|----------------------------------------------------------------------------------------------------|
|                                | Demand                                    | Commodity (cents)                                                                                  |
| Purchased gas cost adjustment: |                                           |                                                                                                    |
| Producer supplier              |                                           | 11.95                                                                                              |
| Pipeline supplier              | \$(0.01)                                  | 3.22                                                                                               |
| Deferred purchased gas cost    |                                           | (8.02)                                                                                             |
| Total                          | (0.01)                                    | 7.16                                                                                               |
|                                |                                           | 63.4                                                                                               |

Sheets Nos. 5C and 5D reflect projected incremental pricing surcharges (MSAC) of \$25,640 for the six month period beginning September 1, 1981. Only two of Natural's sale-for-resale customers had MSAC's to report.

Schedule C of the filing, which sets forth the projected cost of Natural's purchased gas, includes a figure of \$26.1

million reflecting the additional projected costs due to Orders 93 and 93-A. Page 118 of Schedule C explains how the \$26.1 million was derived.

Also, Schedule F of the filing reflects the details of the computation of the Sales Refund Obligation (SRO) under the terms of Settlement Article XVI in Docket No. RP78-78. Per the provisions of the Article, the excess revenues generated were offset by increased costs, therefore, no entry was made to the Deferred Purchased Gas Account.

Natural requests waiver of the Commission regulations to the extent, if any, required to put the proposed tariff sheets into effect on September 1, 1981.

A copy of this filing has been mailed to Natural's jurisdictional customers and to interested State regulatory agencies.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Section 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before August 14, 1981. Protest will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Lois D. Casbell,

Acting Secretary.

[FR Doc. 81-23080 Filed 8-13-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER81-645-000]

**New England Power Co.; Filing**

August 10, 1981.

The filing Company submits the following:

Take notice that on July 31, 1981, the New England Power Company (NEP) tendered for filing revised tariff sheets constituting a new rate W-4 for its Primary Service for Resale. NEP requests an effective date of January 1, 1982 for rate W-4. NEP states that its W-4 revised tariff sheets will result in an increase in jurisdictional base rate revenues on the basis of a 1982 test year of approximately \$69,900,000 although there will be a significant reduction in fuel charges. Although the filing has an effective date of October 1, 1981, NEP has requested a three month suspension. If suspended for three months as

requested, NEP will begin to bill under the W-4 rate on January 1, 1982.

Copies of the filing have been forwarded to each of NEP's Primary Service for Resale customers, to the state regulatory commissions of Massachusetts, New Hampshire, Rhode Island and Vermont, and to the Attorneys General of Massachusetts and Rhode Island.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before August 28, 1981. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-23766 Filed 8-13-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER81-646-000]

**New England Power Co.; Proposed Tariff Change**

August 7, 1981.

The filing company submits the following:

Take notice that New England Power Company ("NEP") on July 31, 1981, tendered for filing a proposed change in its Service Agreement for Primary Service for Resale with The Narragansett Electric Company (Narragansett). The proposed change would increase the fixed credits allowed Narragansett on its purchased power billing by NEP in the amount of \$2,186,400 annually based on the 12 month period ending December 31, 1982.

NEP, conjunctively with its affiliate Narragansett, reviews annually that part of Narragansett's system which is used by it in providing all-requirements service to Narragansett, and upon a substantial change in circumstance, refiles with the Commission the revised generation and transmission credits. The instant revision is primarily due to a substantial increase in return and associated tax requirements associated with Narragansett's generating facilities, along with continuing inflationary trends.



NEP proposes an effective date of January 1, 1982.

Copies of the filing were served upon Narragansett and the Rhode Island Public Utilities Commission.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before August 28, 1981. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 81-23728 Filed 8-13-81; 8:45 am]  
BILLING CODE 6450-85-M

[Docket No. CP80-547]

**NGPL-Canyon Compression Co.;  
Informal Conference**

August 6, 1981.

NGPL-Canyon Compression Company (Canyon) filed pursuant to Section 7(c) of the Natural Gas Act, an application for authorization to install and operate a 22,000 Bhp compressor station and other appurtenant facilities in the Whitney Canyon area, Uinta County, Wyoming. The compression facilities are required for Canyon to receive, compress and redeliver gas for the accounts of Natural Gas Pipeline Company of America, Colorado Interstate Gas Company, Mountain Fuel Supply Company and other eventual purchasers of gas supplies currently uncommitted in the Whitney Canyon area to the proposed Trailblazer System. The total cost of the compression facilities is estimated to be \$18,344,000. On July 23, 1981, Canyon requested a temporary certificate to authorize placement of concrete for the compressor station.

The Commission Staff is unable to determine the allocable and prudent costs associated with the project and is therefore unable to recommend the proper rate in the public convenience and necessity. In this regard, on March 23, 1981, the Staff sent Canyon a data request which, to date, has not been fully answered.

In as much as this application presents issues arising from the implementation of Commission Order No. 94 (Docket No. RM80-47) an informal conference will be held to determine the best procedure for obtaining the data required by that order. Should Canyon be unable to supply the data necessary, it should arrive with the parties in possession of the necessary data or with a method to derive the data in compliance with Section 157.5 of the Commission's regulations.

The informal conference will be held August 13, 1981, at 10 a.m. at the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, and is open to the public; however, attendance or participation at the conference will not serve to make attendees parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of the Canyon's filing are on file with the Federal Energy Regulatory Commission and are available for public inspection.

For further information, contact Keith Pierce, Federal Energy Regulatory Commission, 825 N. Capitol Street, N.E., Washington, D.C. 20426, Tel. (202) 357-8982.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 81-23729 Filed 8-13-81; 8:45 am]  
BILLING CODE 6450-85-M

[Docket No. TA81-2-59-000]

**Northern Natural Gas Co.; Proposed  
Changes in FERC Gas Tariff**

August 7, 1981.

Take Notice that Northern Natural Gas Company, Division of InterNorth, Inc. (Northern) on July 15, 1981 tendered for filing the following tariff sheets:

*Third Revised Volume No. 1*

Second Substitute Fourteenth Revised  
Sheet No. 4b

*Original Volume No. 2*

Second Substitute Twenty-Fourth Revised  
Sheet No. 1c

These revised rate tariff sheets reflect the elimination of the \$0.0096 Louisiana First Use Tax surcharge currently in effect in Northern's rates. Northern requests that these tariff sheets be made effective May 27, 1981, coincident with the actual cessation of collection of the surcharge.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules

of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before August 14, 1981. Protests will be considered by the Commission in determining the appropriate actions to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene.

Copies of this filing are being mailed to Northern's gas utility customers and interested State Commissions and a copy of this filing has been made available for public inspection in a convenient place in Northern's office.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 81-23712 Filed 8-13-81; 8:45 am]  
BILLING CODE 6450-85-M

[Docket No. ER81-651-000]

**Northern States Power Co.  
(Minnesota); Filing**

August 7, 1981.

The filing Company submits the following:

Take notice that Northern States Power Company, Minneapolis, Minnesota, (NSP) on August 3, 1981, tendered for filing proposed rate schedules to NSP's contracts with the following 26 wholesale customers:

|                          | FERC<br>rate<br>sched-<br>ule No. |
|--------------------------|-----------------------------------|
| City of Ada              | 385                               |
| City of Anoka            | 338                               |
| City of Arlington        | 378                               |
| City of Brownston        | 324                               |
| City of Buffalo          | 369                               |
| City of Chaska           | 323                               |
| City of East Grand Forks | 367                               |
| City of Fairfax          | 400                               |
| City of Granite Falls    | 355                               |
| City of Hillsboro        | 314                               |
| Home Light & Power Co.   | 335                               |
| City of Kasota           | 318                               |
| City of Kasson           | 379                               |
| City of Kenyon           | 394                               |
| City of Lake City        | 361                               |
| City of Le Sueur         | 392                               |
| City of Madelia          | 397                               |
| City of Melrose          | 401                               |
| City of North Saint Paul | 371                               |
| City of Olivia           | 368                               |
| City of Saint Peter      | 325                               |
| City of Sauk Centre      | 389                               |
| City of Shakopee         | 365                               |
| City of Sioux Falls      | 386                               |
| City of Waseca           | 380                               |
| City of Winthrop         | 364                               |

The rate schedules are proposed to be effective for deliveries of power and energy on and after October 2, 1981.

NSP states that the proposed rate schedules will increase revenues from the sales to these customers by \$4,840,506.00 based on sales for the January 1, 1982 to December 31, 1982 test



year. The proposed increase is needed, NSP states, so that the revenues will more nearly recover NSP's costs in rendering the service.

Copies of this filing have been mailed to each of NSP's customers affected by the proposed change, to the Minnesota Public Service Commission, the South Dakota Public Utilities Commission, and the North Dakota Public Utilities Commission.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before August 28, 1981. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 81-23082 Filed 8-13-81; 8:45 am]  
BILLING CODE 6450-85-M

[Docket No. ER81-653-000]

**Northern States Power Co.  
(Wisconsin); Filing**

August 11, 1981.

The filing Company submits the following:

Take notice that on August 3, 1981, Northern States Power Company of Eau Claire, Wisconsin (NSP) tendered for filing proposed rate schedule changes with its twelve wholesale customers.

The proposed rate schedule changes will increase revenues from the sales of these customers by \$1,621,648 based on sales for the January 1, 1982 to December 31, 1982 test year. The rate schedule changes include a revised W-1 rate for its ten all requirements non-generating municipal customers; a revised W-1 (BRF) rate through February 27, 1982 for Black River Falls, a generating customer; a revised LP-1 rate for Barron, a generating customer which takes all requirements service; and a new peak shaving rate (Schedule PS-1) which will apply to the City of Black River Falls on February 28, 1982 when its current contract with NSP will expire.

NSP requests an effective date of 60 days from the date of the filing for all

rate schedule changes except for the PS-1 rate for which it requests a waiver of the Commission's notice and filing requirements and an effective date of February 28, 1982.

Copies of the filing were served upon each customer and upon the Wisconsin Public Service Commission.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before August 31, 1981. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 81-23750 Filed 8-13-81; 8:45 am]  
BILLING CODE 6450-85-M

[Docket No. TA81-2-27-000]

**North Penn Gas Co.; Proposed  
Changes in FERC Gas Tariff**

August 7, 1981.

Take notice that North Penn Gas Company (North Penn) on July 31, 1981, tendered for filing proposed changes in its FERC Gas Tariff, First Revised Volume No. 1, pursuant to its PGA Clause for rates to be effective September 1, 1981.

The change in rates contained in this filing reflects an increase of 5.407 cents per Mcf pursuant to Section 14.1 (PGA Clause) of North Penn's tariff to reflect supplier rates which will be in effect on September 1, 1981.

Additionally, this filing reflects a surcharge credit of 7.462 cents per Mcf pursuant to Section 14.2 and Section 14.3 of North Penn's tariff which results from amounts accumulated in the Unrecovered Purchased Gas Cost Account for the period January 1, 1981 through June 30, 1981; the jurisdictional portion of supplier refunds received by North Penn for the same six-month period; carrying charges computed in accordance with Commission Regulations and a carry-over balance from the surcharge credit effective for the period September 1, 1980 through February 28, 1981.

In compliance with Section 282.602(d) of the Commission's Regulations, North Penn states that it has had no activity in either of the accounts 192.1 or 192.2 for the prior PGA period.

North Penn respectfully requests a waiver of any of the Commission's Rules and Regulations as may be required to permit Sixty-seventh Revised Sheet No. PGA-1 and Fourth Revised Sheet No. 15H, submitted herewith, to become effective September 1, 1981, as proposed.

Copies of this filing were served upon North Penn's jurisdictional customers as well as interested State commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before August 19, 1981. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 81-23681 Filed 8-13-81; 8:45 am]  
BILLING CODE 6450-85-M

[Docket No. ST81-323-000]

**ONG Western, Inc.; Application for  
Approval of Rates**

August 11, 1981.

Take notice that on June 18, 1981, ONG Western, Inc. (Applicant), 624 South Boston Avenue, Tulsa, Oklahoma 74119, filed in Docket No. ST81-323-000 an application for approval of rates pursuant to Part 284 of the Commission's Regulations charged for the sale of natural gas to Mid Louisiana Gas Company (Mid Louisiana), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it has entered into a contract to sell natural gas on an interruptible basis to Mid Louisiana. Applicant proposes to charge Mid Louisiana a price equal to Applicant's weighted average acquisition cost of natural gas per million Btu for the month during which such gas is delivered determined in accordance with Section 284.144 of the Commission's Regulations



plus a fee of 10.0 cents per million Btu as compensation for expenses incurred by Applicant and associated with the gathering, treatment, processing, transportation, storage, and delivery of natural gas hereunder including a reasonable profit on such services. It is stated that the term of the agreement entered into on April 27, 1981, between Applicant and Mid Louisiana is for a two-year period commencing on the first day of deliveries. Applicant proposes to sell up to 15 million Btu of gas per day subject to interruption to the extent that gas would be required to enable Applicant to provide adequate service to its regular customers.

Applicant states it has no transportation rate that is currently approved by the Oklahoma Corporation Commission because Applicant is now considered part of Oklahoma Natural Gas Company, a Division of ONEOK Inc. for ratemaking purposes. However, it is asserted that when Applicant was a separate entity for ratemaking purposes it did have a transportation rate approved by the Oklahoma Corporation Commission which is the basis for the rates proposed herein.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 31, 1981, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to a proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 23781 Filed 8-13-81; 8:45 am]  
BILLING CODE 6450-85-M

[Docket No. SA81-52-000]

**Phillips Petroleum Co.; Application for Adjustment**

Issued: August 10, 1981.

Take notice that on June 16, 1981, Phillips Petroleum Company filed with the Federal Energy Regulatory Commission an application for an adjustment under § 154.94(h)(3)(ii) of the Commission's Regulations under the Natural Gas Policy Act of 1978 (NGPA) wherein Phillips seeks to waive the

timely filing of its blanket affidavit coverage for the authority to collect the incremental monthly inflation adjustment increases for the NGPA Section 106(a) maximum lawful prices. The gas involved in this application is purchased by Northwest Pipeline Corporation from the Hogsback Area located in Sublette and Lincoln Counties, Wyoming. Waiver of the filing requirements of § 154.94(h)(3)(ii) would permit collection of the incremental monthly inflation adjustment increases from the effective date of NGPA Section 106(a) price through May 4, 1981, when the blanket affidavit coverage became effective under Phillips Petroleum Company's FERC Gas Rate Schedule No. 279.

The procedures applicable to the conduct of this adjustment proceeding are found in § 1.41 of the Commission's Rules of Practice and Procedure, Order No. 24, issued March 22, 1979.

Any person desiring to participate in this adjustment proceeding shall file a petition to intervene in accordance with the provisions of Section 1.41. All petitions to intervene must be filed on or before August 31, 1981.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 81-23787 Filed 8-13-81; 8:45 am]  
BILLING CODE 6450-85-M

[Docket No. ER81-647-000]

**Public Service Company of Colorado; Proposed Tariff Change**

August 7, 1981.

The filing Company submits the following:

Take notice that Public Service Company of Colorado (PSCo) on July 31, 1981, tendered for filing a proposed change in its FERC Electric Service Tariff. PSCo states that the proposed change is a Supplemental Agreement (Supplement) to PSCo's Power Purchase Agreement (Agreement) with the City of Burlington, Colorado (Burlington), dated February 19, 1974, as amended, on file with the Commission under PSCo's FERC Rate Schedule No. 15.

PSCo indicates that the Supplement provides that Burlington may reduce its obligation to accept and pay for its requirements of electric power and energy provided by the Company by the amount of electric power obtained from Western Area Power Administration (WAPA) for peak shaving purposes only. PSCo will act as the scheduling agent for Burlington in schedules repayment energy to WAPA. PSCo will provide all repayment energy to WAPA for Burlington's account, including any

required losses, and Burlington will pay PSCo for same at the energy charge in effect for PSCo's deliveries of energy to Burlington.

PSCo states that copies of the filing were served upon all parties to the Agreement and affected state commission.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before August 28, 1981. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 81-23780 Filed 8-13-81; 8:45 am]  
BILLING CODE 6450-85-M

[Docket No. GP81-36-000]

**State of Texas, Section 108 NGPA Determination, Phillips Petroleum Co., Embar-B No. 13 Well, JD No. 81-02474; Petition To Vacate Final Well Category Determination and Request for Withdrawal**

Issued: August 10, 1981.

On July 14, 1981 Phillips Petroleum Company (Phillips) filed with the Federal Energy Regulatory Commission (Commission) a petition to vacate and permit withdrawal of the final well category determination for the Embar-B No. 13 well pursuant to the Commission's authority under the Natural Gas Policy Act of 1978 (NGPA), 15 U.S.C. 3301-3432 (Supp. II 1978).

Phillips states that the Texas Railroad Commission made an affirmative determination that the subject well qualified as a stripper well under section 108 of the NGPA and that the determination became final on December 8, 1980, forty-five days after the Commission received notice pursuant to § 275.202(a) of the Commission's Regulations. Phillips further states that the subject well produced 1.91 barrels of oil per day thereby eliminating the well from qualification as "non-associated natural gas" under § 271.803(b). The improper



reporting of production data apparently resulted from a clerical error.

Any person desiring to be heard or to protest this petition should file, on or before September 14, 1981, with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, a protest or a petition to intervene in accordance with § 1.8 or § 1.10 of the Commission's Rules of Practice and Procedure. All protests filed with the Commission will be considered, but will not make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 81-23770 Filed 8-13-81; 8:45 am]  
BILLING CODE 6450-85-M

[Project No. 4957-000]

**City of Rohnert Park, California;  
Application for Preliminary Permit**

August 10, 1981.

Take notice that the City of Rohnert Park (Applicant) filed on June 24, 1981, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. §§ 791(a)-825(r)] for Project No. 4957 to be known as the Horse Linto Creek, Humboldt Project located on Horse Linto Creek in Humboldt County, California. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Robert A. Lewis, City of Rohnert Park, 6750 Commerce Boulevard, Rohnert Park, California 95427.

**Project Description**—The proposed project would consist of three facilities:

The Upper Facility would consist of: (1) a 80-foot long, 5-foot high diversion structure; (2) a 10,200-foot long diversion conduit; (3) a 1,000-foot long penstock; (4) a powerhouse with a total rated capacity of 4,500 kW; and (5) a 1.5-mile long transmission line.

The Middle Facility would consist of: (1) a 88-foot long, 5-foot high diversion structure; (2) a 8,300-foot long diversion conduit; (3) a 900-foot long penstock; (4) a powerhouse with a total rated capacity of 3,000 kW; and (5) a 1-mile long transmission line.

The Lower Facility would consist of a 45-foot long, 5-foot high diversion structure; (2) a 4,500-foot long diversion conduit; (3) a 1,500-foot long penstock; (4) a powerhouse with a total rated capacity of 2,050 kW; and (5) a 6-mile long transmission line.

**Proposed Scope of Studies Under Permit**—A preliminary permit, if issued, does not authorize construction. The Applicant is seeking a 36-month permit to study the feasibility of constructing and operating the proposed project.

**Competing Applications**—This application was filed as a competing application to the Horse Linto Creek, Humboldt Project No. 4417 filed on March 25, 1981, by Consolidated Hydroelectric, Inc. under 18 C.F.R. § 4.33 (1980). Public notice of the filing of the initial application has already been given and the due date for filing competing application or notices of intent has passed. Therefore, no further competing applications or notices of intent to file competing applications will be accepted for filing.

**Agency Comments**—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

**Comments, Protests, or Petitions To Intervene**—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 C.F.R. § 1.8 or § 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protest, or petition to intervene must be received on or before September 8, 1981.

**Filing and Service of Responsive Documents**—Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Room 208 RB at the above address. A copy of any petition to intervene must also be served upon each representative of the

Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-23692 Filed 8-13-81; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 4962-000]

**City of Rohnert Park, California;  
Application for Preliminary Permit**

August 11, 1981.

Take notice that the City of Rohnert Park (Applicant) filed on June 24, 1981, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. §§ 791(a)-825(r)] for Project No. 4962 known as the Big Creek Near New River, Trinity located on Big Creek in Trinity County, California. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Robert A. Lewis, City of Rohnert Park, 6750 Commerce Blvd., Rohnert Park, CA 95427.

**Project Description**—The project would consist of: (1) an 86-foot long, 5-foot high diversion structure; (2) a 9,000-foot long diversion conduit; (3) a 1,150-foot long penstock; (4) a powerhouse with a total rated capacity of 2,540 kW; and (5) a 5.5-mile long transmission line. The average annual energy generation is estimated to be 10.0 million kWh.

**Proposed Scope of Studies Under Permit**—A preliminary permit, if issued, does not authorize construction. The Applicant is seeking a 36-month permit to study the feasibility of constructing and operating the proposed project.

**Competing Applications**—This application was filed as a competing application to the Big Creek Near New River, Trinity Project No. 4395 filed on March 23, 1981, by Consolidated Hydroelectric, Inc. under 18 C.F.R. § 4.33 (1980). Public notice of the filing of the initial application has already been given and the due date for filing competing application or notices of intent has passed. Therefore, no further competing applications or notices of intent to file competing applications will be accepted for filing.

**Agency Comments**—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

**Comments, Protests, or Petitions To Intervene**—Anyone may submit comments, a protest, or a petition to



intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 C.F.R. 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protest, or petition to intervene must be received on or before September 11, 1981.

**Filing and Service of Responsive Documents**—Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of the notice.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 81-23680 Filed 8-13-81; 8:45 am]  
BILLING CODE 6450-85-M

[Project No. 4965-000]

**City of Rohnert Park, California;  
Application for Preliminary Permit**

August 10, 1981.

Take notice that the City of Rohnert Park (Applicant) filed on June 24, 1981, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. § 791(a)-825(r)] for Project No. 4965 known as the Deep Hole Creek, Mendocino Project located on Deep Hole Creek in Mendocino County, California. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Robert A. Lewis, City of Rohnert Park, 6750 Commerce Blvd., Rohnert Park, CA 95427.

**Project Description**—The project would consist of: (1) a 150-foot long, 5-foot high diversion structure; (2) a 4,800-foot long diversion conduit; (3) a 1,800-foot long penstock; (4) a powerhouse with a total rated capacity of 4,600 kW; and (5) a 13-mile long transmission line.

The average annual energy generation is estimated to be 17.2 million kWh.

**Proposed Scope of Studies Under Permit**—A preliminary permit, if issued, does not authorize construction. The Applicant is seeking a 36-month permit to study the feasibility of constructing and operating the proposed project.

**Competing Applications**—This application was filed as a competing application to the Deep Hole Creek, Mendocino Project No. 4338 filed on March 13, 1981, by Consolidated Hydroelectric, Inc. under 18 C.F.R. § 4.33 (1980). Public notice of the filing of the initial application has already been given and the due date for filing competing application or notices of intent has passed. Therefore, no further competing applications or notices of intent to file competing applications will be accepted for filing.

**Agency Comments**—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

**Comments, Protests, or Petitions To Intervene**—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 C.F.R. 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protest, or petition to intervene must be received on or before September 8, 1981.

**Filing and Service of Responsive Documents**—Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any petition to intervene must also be served upon each representative

of the Applicant specified in the first paragraph of the notice.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 81-23691 Filed 8-13-81; 8:45 am]  
BILLING CODE 6450-85-M

[Project No. 4971-000]

**City of Rohnert Park, California;  
Application for Preliminary Permit**

August 10, 1981.

Take notice that the City of Rohnert Park (Applicant) filed on June 25, 1981, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. §§ 791(a)-825(r)] for Project No. 4971 known as the Beaver Creek, Mendocino Project located on Beaver Creek in Mendocino County, California. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Robert A. Lewis, City of Rohnert Park, 6750 Commerce Blvd., Rohnert Park, CA 95427.

**Project Description**—The project would consist of: (1) a 338-foot long, 5-foot high diversion structure; (2) a 5,000-foot long diversion conduit; (3) a 1,300-foot long penstock; (4) a powerhouse with a total rated capacity of 4,390 kW; and (5) a 11-mile long transmission line. The average annual energy generation is estimated to be 15.4 million kWh.

**Proposed Scope of Studies Under Permit**—A preliminary permit, if issued, does not authorize construction. The Applicant is seeking a 36-month permit to study the feasibility of constructing and operating the proposed project.

**Competing Applications**—This application was filed as a competing application to the Beaver Creek, Mendocino Project No. 4330 filed on March 12, 1981, by Consolidated Hydroelectric, Inc. under 18 C.F.R. § 4.33 (1980). Public notice of the filing of the initial application has already been given and the due date for filing competing application or notices of intent has passed. Therefore, no further competing applications or notices of intent to file competing applications will be accepted for filing.

**Agency Comments**—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

**Comments, Protests, or Petitions To Intervene**—Anyone may submit comments, a protest, or a petition to



intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 C.F.R. 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petition to intervene must be received on or before September 8, 1981.

**Filing and Service of Responsive Documents**—Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", or "PETITION TO INTERVENE" as applicable and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of the notice.

Kenneth F. Plumb,  
Secretary.

[FR Doc 81-23096 Filed 8-13-81; 8:45 am]

BILLING CODE 6450-95-M

[Project No. 4975-000]

**City of Rohnert Park, California;  
Application for Preliminary Permit**

August 11, 1981.

Take notice that the City of Rohnert Park (Applicant) filed on June 25, 1981, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. §§ 791(a)—825(r)] for Project No. 4975 known as the Big Bar Creek, Project located on Big Bar Creek in Trinity County, California. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Robert A. Lewis, City of Rohnert Park, 6750 Commerce Blvd., Rohnert Park, CA 94927.

**Project Description**—The project would consist of: (1) a 59-foot long, 5-foot high diversion structure; (2) a 9,500-foot long diversion conduit; (3) a 900-foot long penstock; (4) a powerhouse with a total rated capacity of 1,400 kW; and (5) a 0.5-mile long transmission line. The average annual energy generation is estimated to be 5.7 million kWh.

**Proposed Scope of Studies Under Permit**—A preliminary permit, if issued, does not authorize construction. The Applicant is seeking a 36-month permit to study the feasibility of constructing and operating the proposed project.

**Competing Applications**—This application was filed as a competing application to the Big Bar Creek, Project No. 4088 filed on January 29, 1981, by Consolidated Hydroelectric, Inc. under 18 C.F.R. § 4.33 (1980). Public notice of the filing of the initial application has already been given and the due date for filing competing application or notices of intent has passed. Therefore, no further competing applications or notices of intent to file competing application will be accepted for filing.

**Agency Comments**—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

**Comments, Protests, or Petitions To Intervene**—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 C.F.R. 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protest, or petition to intervene must be received on or before September 11, 1981.

**Filing and Service of Responsive Documents**—Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any petition to intervene must also be served upon each representative

of the Applicant specified in the first paragraph of the notice.

Kenneth F. Plumb,  
Secretary.

[FR Doc 81-23096 Filed 8-13-81; 8:45 am]

BILLING CODE 6450-95-M

[Docket No. SA81-51-000]

**Samedan Oil Corp.; Application for Staff Adjustment**

Issued: August 10, 1981.

On July 27, 1981 Samedan Oil Corporation (Applicant), Box 909, Ardmore, Oklahoma 73401 filed an application for a Staff Adjustment pursuant to section 502(c) of the Natural Gas Policy Act of 1978 (NGPA), 15 U.S.C. 3412(c) (Supp. II 1978), and § 1.41 of the Federal Energy Regulatory Commission (Commission) Rules of Practice and Procedure.

Applicant claims special hardship, inequity or unfair distribution of burdens and irreparable injury if unable to make retroactive collections for deliveries made from five wells drilled in offshore waters of Nueces and Kleberg Counties, Texas prior to the date of filing for a determination with the Texas Railroad Commission. Applicant alleges that it misunderstood the Railroad Commission's rules for filing for NGPA section 102(c)(1)(B) believing that an application which did not include a 4-point test could not be filed until the test was complete. Applicant requests an adjustment from §§ 273.202 and 204 of the Commission's regulations.

The procedures applicable to the conduct of this adjustment proceeding are found in 18 CFR 1.41 (44 FR 18961, March 30, 1979). Any person desiring to participate in this adjustment proceeding shall file a petition to intervene in accordance with the provisions of § 1.41. All petitions to intervene must be filed on or before August 31, 1981.

Kenneth F. Plumb,  
Secretary.

[FR Doc 81-23768 Filed 8-13-81; 8:45 am]

BILLING CODE 6450-95-M

[Docket No. TA81-2-7-001]

**Southern Natural Gas Co.; Proposed Changes in FERC Gas Tariff**

August 7, 1981.

Take notice that Southern Natural Gas Company (Southern) on July 15, 1981, tendered for filing changes in its FERC Gas Tariff, Sixth Revised Volume No. 1 to be effective May 1, 1981, in



compliance with the Commission's order of June 29, 1981, in *Arkansas Louisiana Gas Company, et al.*, Docket Nos. TA81-2-31, et al.

Said filing reduces Southern's rates by 2.329¢ per Mcf to reflect the elimination of the Louisiana First Use Tax current adjustment effective May 1, 1981, as required by the aforementioned order.

Copies of the filing are being served upon the company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before August 14, 1981. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 81-23714 Filed 8-13-81; 8:45 am]  
BILLING CODE 6450-85-M

[Docket No. CP81-443-000]

**Southwest Gas Corp.; Application**

August 11, 1981.

Take notice that on July 31, 1981, Southwest Gas Corporation (Applicant), P.O. Box 15015, Las Vegas, Nevada 89114, filed in Docket No. CP81-443-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of two high pressure tap facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant specifically proposes to construct and operate one high pressure tap on Applicant's Elko Lateral near milepost 8.80 to facilitate natural gas delivery to a residential customer in Humboldt County, Nevada, and one high pressure tap on Applicant's North Lake Tahoe Lateral near milepost 20.51 to facilitate delivery of natural gas to a residential customer in Washoe County, Nevada.

Applicant estimates the cost of the Elko Lateral facility to be approximately \$900 and the cost of the North Lake Tahoe Lateral facility to be approximately \$1,950 which costs would be financed by customers' advances made to Applicant.

It is submitted that the Elko Lateral tap would have annual and peak day usage of 97 Mcf and 1.5 Mcf, respectively, while the North Lake Tahoe Lateral tap would have annual and peak day usage of 365 Mcf and 5 Mcf, respectively.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 31, 1981, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 81-23752 Filed 8-13-81; 8:45 am]  
BILLING CODE 6450-85-M

[Docket No. RP81-99-000]

**Tennessee Gas Pipeline Company, a Division of Tenneco, Inc.; Filing of Report of Disposition of Refund of Louisiana First Use Tax**

August 10 1981.

Take notice that on July 30, 1981, Tennessee Gas Pipeline Company, a Division of Tenneco, Inc. (Tennessee) filed its report of disposition of a refund totalling \$3,502,908.71 (principal and interest) received from the State of Louisiana on July 15, 1981, pertaining to the Louisiana First Use Tax (LFUT) on Natural Gas. Tennessee states that it disbursed the jurisdictional portion of the refund to its customers on July 30, 1981, by means of a check.

Future LFUT Tennessee refunds shall be docketed RP81-99.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before August 19, 1981. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 81-23709 Filed 8-13-81; 8:45 am]  
BILLING CODE 6450-85-M

[Docket Nos. CP78-490, CP78-499, CP78-523, CP78-543, CP79-67, and CP79-81]

**Tennessee Gas Pipeline Co., a Division of Tenneco Inc.; Petition To Amend**

August 11, 1981.

Take notice that on July 10, 1981,<sup>1</sup> Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Petitioner), P.O. Box 2511, Houston, Texas 77001, filed in Docket Nos. CP78-490, CP78-499, CP78-523, CP78-543, CP79-67, and CP79-81 a petition to amend the orders issued December 15, 1978, in Docket Nos. CP78-490, CP78-499 and CP78-523 and the orders issued on December 27,

<sup>1</sup> The petition was initially tendered for filing on July 10, 1981; however, the fee required by § 159.1 of the Regulations under the Natural Gas Act (18 CFR 159.1) was not paid until July 16, 1981; thus, filing was not completed until the latter date.



1978, February 16, 1979, and March 27, 1979, in Docket Nos. CP78-543, CP79-81 and CP79-67, respectively, pursuant to Section 7(c) of the Natural Gas Act so as to authorize removal of the condition requiring crediting of all transportation revenues to Account No. 191 of the Uniform System of Accounts Prescribed for Natural Gas Companies, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

It is asserted that Petitioner is authorized by the orders issued December 15, 1978, in Docket Nos. CP78-490, CP78-499 and CP78-523 to transport natural gas for The Brooklyn Union Gas Company, Berkshire Gas Company, and Bay State Gas Company, respectively. It is also stated that Petitioner is authorized by the orders issued on December 27, 1978, February 16, 1979, and March 17, 1979, in Docket Nos. CP78-543, CP79-81 and CP79-67 to provide transportation service for Haverhill Gas Company, Connecticut Gas Company and Valley Gas Company, respectively. Petitioner alleges that in all of these cases Petitioner was required by the Commission to credit all revenues received from these transportation services in excess of incremental costs to its Account No. 191 of the Uniform System of Accounts Prescribed for Natural Gas Companies. Petitioner requests herein that such condition be removed in light of the decision of the United States Court of Appeals for the District of Columbia Circuit issued December 20, 1979, in *Panhandle Eastern Pipe Line Company v. F.E.R.C.*, 613 F.2d 1120 (D.C. Cir. 1979).

Petitioner asserts that the revenue crediting requirement in the orders in the instant dockets has the effect of adjusting the rates charged to customers not receiving the services to be certificated. Petitioner also contends that the same revenue crediting requirement violates the Commission's purchased gas adjustment regulations. It is submitted that this unduly discriminates among Petitioner's customers by excluding revenues from certain transportation services from being considered in a rate proceeding and credited to the PGA deferred account. Petitioner states that only its sales customers benefit from Petitioner's performing these transportation services and that the other transportation customers are forced during the term of these transportation agreements to bear more than their fair share of the fixed transmission costs on Petitioner's system. It is submitted that if these revenues are included in a rate

proceeding, Petitioner would either allocate costs to transportation services or credit that anticipated revenues to its overall system cost of service and all other services, sales and transportation customers would benefit.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before August 31, 1981, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 81-23753 Filed 8-13-81; 8:45 am]  
BILLING CODE 6450-85-M

[Docket No. TA81-2-10-001 (PGA81-2, IPR81-2)]

**Tennessee Natural Gas Lines, Inc.;  
PGA Tariff Filing**

August 7, 1981.

Take notice that on July 27, 1981, Tennessee Natural Gas Lines, Inc. ("TNGL") tendered for filing a substitute rate change, pursuant to the purchased gas cost adjustment ("PGA") provisions of its F.E.R.C. Gas Tariff, First Revised Volume No. 1 consisting of the following tariff sheet: Substitute Thirty-Sixth Revised Sheet No. PGA-1.

TNGL requests that such tariff sheet be allowed to become effective on July 1, 1981, the effective date of the tariff sheet it supersedes.

TNGL states that the purpose of its filing is to track the re-filing required by the Commission of the PGA rate change of its sole supplier, Tennessee Gas Pipeline Company, a Division of Tenneco, Inc. ("TGP") to eliminate the current effect of the Louisiana First Use Tax, such re-filing by TGP to be effective July 1, 1981.

TNGL states that copies of the filing were served upon its jurisdictional customer, the interested state regulatory commission, and are available for public inspection at TNGL's offices in Nashville, Tennessee.

Any person desiring to be heard or to protest said filing should file a petition

to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, Washington, D.C. 20426, in accordance with Sections 1.8 or 1.10 of the Commission's Rule of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before August 19, 1981. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings.

Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and available for public inspection.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 81-23715 Filed 8-13-81; 8:45 am]  
BILLING CODE 6450-85-M

[Docket No. RP81-96]

**Tennessee Natural Gas Lines, Inc.;  
Proposed Rate Change**

August 7, 1981.

Take notice that, on July 30, 1981, Tennessee Natural Gas Lines, Inc. ("TNGL") tendered for filing changes to its F.E.R.C. Gas Tariff, First Revised Volume No. 1, consisting of the following tariff sheets:

Thirty-Seventh Revised Sheet No. PGA-1  
Eighth Revised Sheet No. 4-A  
Seventh Revised Sheet No. 4-B  
First Revised Sheet No. 4-B(2)  
Second Revised Sheet No. 8-1

The proposed changes would increase revenues from jurisdictional sales and service by \$832,346, or approximately 1.38 percent, based upon the period of twelve consecutive months of actual experience ending March 31, 1981, as adjusted for known and measurable changes through December 31, 1981. TNGL states that, in addition to such general rate increase, its tariff filing makes minor conforming, clarifying, and updating changes in certain provisions of its tariff.

TNGL states that its general rate increase is necessary so as to provide it with the minimum return necessary to enable it to maintain its credit and financial integrity and to attract the capital which it will require and to recover increased taxes and increased operating and maintenance expenses. It states that its tariff filing proposes no increase in depreciation rates and is based on a slightly increased rate base and slightly reduced sales volumes.

TNGL states that its tariff filing was served upon its jurisdictional customer,



Nashville Gas Company, and the affected state commission, the Tennessee Public Service Commission.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure on or before August 19, 1981. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 81-23683 Filed 8-13-81; 8:45 am]  
BILLING CODE 6450-85-M

[Docket No. CP81-391-000]

**Texas Gas Transmission Corp.;  
Application**

August 11, 1981.

Take notice that on June 22, 1981, Texas Gas Transmission Corporation (Applicant), P.O. Box 1160, Owensboro, Kentucky 42301, filed in Docket No. CP81-391-000 an application pursuant to Section 7 of the Natural Gas Act and § 157.7(g) of the Regulations thereunder (18 CFR 157.7(g)) for a certificate of public convenience and necessity authorizing the construction and for permission and approval to abandon for the 12-month period commencing November 5, 1981, and operation of various field compression and related metering and appurtenant facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The stated purpose of this budget-type application is to enable Applicant to act with reasonable dispatch in constructing and abandoning facilities which would not result in changing Applicant's system salable capacity or service from that authorized prior to the filing of the instant application.

Applicant states the total cost of the proposed construction and abandonment under § 157.7(g) would not exceed \$3,000,000 and the cost for any single project would not exceed \$500,000. Such costs, it is asserted, would be financed from funds on hand.

Any person desiring to be heard or to make any protest with reference to said application should on or before August

31, 1981, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.70). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and permission and approval for the proposed abandonment are required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 81-23754 Filed 8-13-81; 8:45 am]  
BILLING CODE 6450-85-M

[Docket No. CP81-438-000]

**Texas Sea Rim Pipeline, Inc.;  
Application**

August 11, 1981.

Take notice that on July 29, 1981, Texas Sea Rim Pipeline, Inc. (Applicant), P.O. Box 71, Conroe, Texas 77301, filed in Docket No. CP81-438-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for Natural Gas Pipeline Company of America (Natural), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant, a wholly-owned subsidiary of The Superior Oil Company (Superior), proposes to transport natural gas produced from Outer Continental Shelf Block 9, Sabine Pass area, offshore Louisiana, and purchased by Natural. It is submitted that such gas would be delivered to Natural at the outlet side of field separation facilities located on Superior's existing Platform No. 2 in State Pooled Unit Block 14L, in the Sabine Pass area, offshore Texas. Subsequently, it is stated, such gas would be transported, pursuant to a transportation agreement dated December 1, 1980, onshore through Applicant's existing 14-inch pipeline and delivered to Natural at an existing point of interconnection in Jefferson County, Texas.

Applicant estimates by mid-September 1981 the volume of gas to be transported would be approximately 52,500 Mcf per day.

For such transportation service Applicant proposes to charge Natural a rate of 5.37 cents per Mcf of gas.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 31, 1981, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.



Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 81-23755 Filed 8-13-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP80-17]

**Trans-Anadarko Pipeline System,  
Successor in Interest to United Gas  
Pipeline Co.; Environmental Inspection  
of the Route of a Proposed Pipeline**

August 7, 1981.

Notice is hereby given that from August 18 to August 20, 1981, members of the staff of the Federal Energy Regulatory Commission (FERC) accompanied by technicians representing Trans-Anadarko Pipeline System (Trans-Anadarko) will conduct an environmental inspection of the route of the proposed Trans-Anadarko Project. The inspection will be made by over-flight of the proposed route in a helicopter rented for this purpose.

Further information can be obtained from Alan Barnett of the Environmental Evaluation Branch at (202) 357-9041.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 81-23701 Filed 8-13-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. TA81-2-29-000]

**Transcontinental Gas Pipe Line Corp.;  
Tariff Filing**

August 7, 1981.

Take notice that on July 14, 1981, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing Twenty-First Revised Sheet Nos. 12 and 15 of Second Revised Volume No. 1 and Twenty-Seventh Revised Sheet No. 121 of Original Volume No. 2 of its FERC Gas Tariff. The proposed effective date of these revised tariff sheets is May 1, 1981.

Transco states that the purpose of this filing is to provide for the elimination of the currently effective Louisiana First Use Tax (LFUT) Adjustment of 4.4¢ per dt in the commodity rate or delivery charge of Transco's CD, G, OG, E, PS, S-2, ACQ and X-20 Rate Schedules which is determined pursuant to Section 25 of the General Terms and Conditions of Second Revised Volume No. 1 of Transco's FERC Gas Tariff.

On May 26, 1981, the Supreme Court issued its opinion in *Maryland v. Louisiana*, No. 86, holding that the

collection of the LFUT by the State of Louisiana is unconstitutional. That decision has been implemented by the issuance of the Court's decree issued June 15, 1981. Furthermore, the Commission of June 29, 1981, issued its "Order Directing Pipelines To Cease Collection of the First Use Tax From Their Customers, Terminating Tracking of the First Use Tax And Requiring the Filing of Revised Rate Tariff Sheets" which provides that the pipelines shall file by July 15, 1981, revised rate tariff sheets which eliminate from their tariffs the current adjustment for the first use tax.

The Company states that copies of the filing are being mailed to each of its purchasers, and to interested State Commissions and parties.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before August 14, 1981. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 81-23698 Filed 8-13-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. TA81-2-29-001]

**Transcontinental Gas Pipe Line Corp.;  
Tariff Filing**

August 7, 1981.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing on July 31, 1981 Twenty-Second Revised Sheet No. 12, Twenty-Second Revised Sheet No. 15 and Fourth Revised Sheet No. 16 to Second revised Volume No. 1, and Twenty-Eighth Revised Sheet No. 121 to Original Volume No. 2 of Transco's FERC Gas Tariff. These tariff sheets, which are proposed to be effective September 1, 1981, reflect a net decrease of 38.5¢ per dekatherm (dt) in the commodity or delivery charge of Transco's CD, G, OG, E, PS and S-2 rate

schedules, a net decrease of 39.6¢ per dt in the commodity charge under the ACQ rate schedule, and a net increase of 1.1¢ per dt in the delivery charge of the X-20 rate schedule.

Transco states that these changes have been computed in accordance with applicable tracking provisions contained in the General Terms and Conditions of its FERC Gas Tariff, Second Revised Volume No. 1. The tracking rate change under Transco's PGA clause amounts to a decrease of 39.6¢ per dt in the commodity or delivery charge in its CD, G, OG, E, PS, S-2 and ACQ rate schedules. This decrease is comprised of a 48.5¢ per dt decrease in the Deferred Adjustment offset by an 8.9¢ per dt increase in the current gas cost adjustment. The decrease in the Deferred Adjustment represents the difference between the currently effective Deferred Adjustment of 34.5¢ per dt and the proposed Deferred Adjustment of (14.0)¢ per dt required to eliminate the credit balance of \$(61,618,142) accumulated in Transco's Unrecovered Purchased Gas Cost Account at June 30, 1981 over the six-month period commencing September 1, 1981. Transco further states that its tracking rate change to reflect curtailment credits is an increase of 1.1¢ per dt in the commodity or delivery charge under its CD, G, OG, E, PS, S-2 and X-20 rate schedules.

The Company states that copies of the filing are being mailed to each of its jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before August 19, 1981. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 81-23716 Filed 8-13-81; 8:45 am]

BILLING CODE 6450-85-M



[Project No. 4942-000]

**City of Ukiah, Calif.; Application for Preliminary Permit**

August 10, 1981.

Take notice that the City of Ukiah (Applicant) filed on June 23, 1981, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. §§ 791(a)—825(r)] for Project No. 4942 known as the Deep Hole Creek Project located on Deep Hole Creek in Mendocino County, California. The application is on file and is available for public inspection. Correspondence with the Applicant should be directed to: Honorable Charles Meyers, Mayor, City of Ukiah, 203 South School Street, Ukiah, California 95482.

**Project Description**—The project would consist of: (1) a 150-foot long, 5-foot high diversion structure; (2) a 4,800-foot long diversion channel; (3) a 1,800-foot long penstock; (4) a powerhouse to contain a single generating unit with a total rated capacity of 4,500 kW; and (5) a 13-mile long transmission line. The average annual energy generation is estimated to be 17.2 million kWh.

**Proposed Scope of Studies Under Permit**—A preliminary permit, if issued, does not authorize construction. The Applicant is seeking a 36-month permit to study the feasibility of constructing and operating the proposed project.

**Competing Applications**—This application was filed as a competing application to the Deep Hole Creek, Mendocino Project No. 4338 filed on March 3, 1981, by Consolidated Hydroelectric, Inc. under 18 C.F.R. § 4.33 (1980). Public notice of the filing of the initial application has already been given and the due date for filing competing applications or notices of intent has passed. Therefore, no further competing applications or notices of intent to file competing applications will be accepted for filing.

**Agency Comments**—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

**Comments, Protests, or Petitions To Intervene**—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 C.F.R. 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the

Commission's Rules may become a party to the proceeding. Any comments, protest, or petition to intervene must be received on or before September 8, 1981.

**Filing and Service of Responsive Documents**—Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", or "PETITION TO INTERVENE" as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of the notice.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 81-23693 Filed 8-13-81 8:45 am]

BILLING CODE 6450-85-M

[Project No. 4943-000]

**City of Ukiah, Calif.; Application for Preliminary Permit**

August 10, 1981.

Take notice that the City of Ukiah (Applicant) filed on June 23, 1981, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. §§ 791(a)—825(r)] for Project No. 4943 known as the Beaver Creek Hydropower Project located on Beaver Creek in Mendocino County, California. The application is on file and is available for public inspection. Correspondence with the Applicant should be directed to: Honorable Charles Meyers, Mayor, City of Ukiah, 203 South School Street, Ukiah, California 95482.

**Project Description**—The project would consist of: (1) a 350-foot long, 5-foot high diversion structure; (2) a 5,000-foot long diversion channel; (3) a 1,250-foot long penstock; (4) a powerhouse to contain a single generating unit with a total rated capacity of 4,400 kW; and (5) a 11-mile long transmission line. The average annual energy generation is estimated to be 15.5 million kWh.

**Proposed Scope of Studies Under Permit**—A preliminary permit, if issued, does not authorize construction. The Applicant is seeking a 36-month permit to study the feasibility of constructing and operating the proposed project.

**Competing Applications**—This application was filed as a competing application to the Beaver Creek, Mendocino Project No. 4330 filed on March 12, 1981, by Consolidated Hydroelectric, Inc. under 18 C.F.R. § 4.33 (1980). Public notice of the filing of the initial application has already been given and the due date for filing competing applications or notices of intent has passed. Therefore, no further competing applications or notices of intent to file competing applications will be accepted for filing.

**Agency Comments**—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

**Comments, Protests, or Petitions To Intervene**—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 C.F.R. 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protest, or petition to intervene must be received on or before September 8, 1981.

**Filing and Service of Responsive Documents**—Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", or "PETITION TO INTERVENE" as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of the notice.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 81-23694 Filed 8-13-81; 8:45 am]

BILLING CODE 6450-85-M



[Project No. 4946-000]

**City of Ukiah, Calif.; Application for Preliminary Permit**

August 10, 1981

Take notice that the City of Ukiah, California (Applicant) filed on June 23, 1981, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. §§ 791(a)-825(r)] for Project No. 4946 to be known as the Cold Creek Hydropower Project located on Cold Creek in Mendocino and Glenn Counties, California. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Charles Myers, Mayor, City of Ukiah, 203 South School Street, Ukiah, California 95482.

**Project Description**—The project would consist of five separate facilities: Site 1 would consist of: (1) a 146-foot long, 5-foot high diversion structure; (2) a 6,800-foot long diversion channel; (3) a 600-foot long penstock; and (4) a powerhouse to contain a generating unit with a rated capacity of 3,800 kW.

Site 2 would consist of: (1) a 190-foot long, 5-foot high diversion structure; (2) a 3,800-foot long diversion channel; (3) a 450-foot long penstock; and (4) a powerhouse to contain a generating unit with a rated capacity of 3,700 kW.

Site 3 would consist of: (1) a 118-foot long, 5-foot high diversion structure; (2) a 5,500-foot long diversion channel; (3) a 1,560-foot long penstock; and (4) a powerhouse to contain a single generating unit with a rated capacity of 4,800 kW.

Site 4 would consist of: (1) a 142-foot long, 5-foot high diversion structure; (2) a 5,300-foot long diversion channel; (3) a 800-foot long penstock; and (4) a powerhouse to contain a single generating unit with a rated capacity of 4,800 kW.

Site 5 would consist of: (1) a 195-foot long, 5-foot high diversion structure; (2) a 2,250-foot long diversion channel; (3) a 950-foot long penstock; (4) a powerhouse to contain a single generating unit with a rated capacity of 4,700 kW; and (5) a new 12.5-kV transmission line connecting the five facilities and extending to an existing Pacific Gas and Electric Company line.

**Proposed Scope of Studies under Permit**—A preliminary permit, if issued, does not authorize construction. The applicant is seeking a 36-month permit to study the feasibility of constructing and operating the proposed project.

**Competing Applications**—This application was filed as a competing application to the Cold Creek, Mendocino Project No. 4415 filed on

March 25, 1981, by Consolidated Hydroelectric, Inc. under 18 CFR § 4.33 (1980). Public notice of the filing of the initial application has already been given and the due date for filing competing application or notices of intent has passed. Therefore, no further competing applications or notices of intent to file competing applications will be accepted for filing.

**Agency Comments**—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

**Comments, Protests, or Petitions to Intervene**—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR § 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protest, or petition to intervene must be received on or before September 8, 1981.

**Filing and Service of Responsive Documents**—Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Room 208 RB at the above address. A copy of any petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-23695 Filed 8-13-81; 8:45 am]

BILLING CODE 6450-65

[Docket No. CP81-411-000]

**United Gas Pipe Line Co.; Application**

August 7, 1981.

Take notice that on July 10, 1981, United Gas Pipe Line Company

(Applicant), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP81-411-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the establishment of an additional delivery point for the sale and delivery of natural gas to Entex, Inc. (Entex) in Calcasieu Parish, Louisiana, all as more fully set forth in its application which is on file with the Commission and open for public inspection.

Applicant states that pursuant to the terms and conditions of an existing service agreement between Applicant and Entex dated April 17, 1979, Applicant delivers to Entex for resale and distribution under the Lake Charles Billing Area Unit a maximum daily quantity of 63,474 Mcf of natural gas.

Applicant states that by letter dated June 19, 1981, Entex has informed Applicant that it desires Applicant to make sales and deliveries of natural gas under the aforesaid existing service agreement at an additional delivery point on Applicant's existing Cities Service 20-inch line near Station 801 + 35 located in Calcasieu Parish, Louisiana. It is stated that the new delivery point hereinafter referred to as City Gate No. 3 would permit Entex to provide gas for an existing customer.

Applicant states that in order to effectuate gas service to the proposed City Gate No. 3 Entex would reallocate volumes in the Lake Charles service area as set forth in its letter to Applicant dated June 30, 1981. Applicant asserts that no increase in the present maximum daily quantity allocation or curtailment volumes would be required and no new construction of facilities would be necessary hereunder.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 28, 1981, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to



jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 81-23684 Filed 8-13-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP81-431-000]

**United Gas Pipe Line Co.; Application**

August 7, 1981.

Take notice that on July 24, 1981, United Gas Pipe Line Company (Applicant), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP81-431-000 an application pursuant to Section 7 of the Natural Gas Act and Section 157.7(g) of the Regulations thereunder (18 CFR 157.7(g)) for a certificate of public convenience and necessity authorizing the construction and for permission and approval to abandon during the 12-month period commencing November 13, 1981, and operation of various field compression and related metering and appurtenant facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The stated purpose of this budget-type application is to enable Applicant to act with reasonable dispatch in constructing and abandoning facilities which would not result in changing Applicant's system salable capacity or service from that authorized prior to the filing of the instant application.

Applicant requests waiver of cost limitations as set forth in Section 157.7(g). Applicant proposes a total cost limitation of \$5,607,400 with no single project to exceed \$841,000. Such amounts, it is asserted, are required because of the inflationary trend experienced in construction costs in recent years. Applicant asserts that

absent the proposed waiver the total amount to be expended hereunder would be limited to \$3,000,000 with a single project not to exceed \$500,000.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 28, 1981, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.70). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and permission and approval for the proposed abandonment are required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 81-23731 Filed 8-13-81; 8:45 am]

BILLING CODE 6450-85

[Docket No. ER81-656-000]

**Washington Water Power Co.; Filing**

August 10, 1981.

The filing Company submits the following:

Take notice that on August 4, 1981, The Washington Water Power Company (Washington) tendered for filing copies of a service schedule applicable to what Washington refers to as a "Capacity

Sales Agreement" between Washington and the City of Seattle, Department of Lighting (Seattle) for the sale of capacity. Washington states that the capacity will be made available to Seattle from November 1, 1981, through February 28, 1982.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before August 31, 1981. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 81-23771 Filed 8-13-81; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 4567-000]

**John N. Webster; Application for Preliminary Permit**

August 11, 1981.

Take notice that Mr. John N. Webster (Applicant) filed on April 20, 1981, and revised on June 26, 1981, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. §§ 791(a)-825(r)] for Project No. 4567 known as the Gonic Saw Mill Dam Project located on the Cocheco River in Strafford County, New Hampshire. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. John N. Webster, P.O. Box 1073, Dover, New Hampshire 03820.

**Project Description**—The project would consist of: (1) the existing Gonic Saw Mill Dam, an 80-foot long, 22-foot high concrete gravity structure which is owned by the Gonic Realty Trust Company; (2) an existing 325-foot long power canal; (3) an existing 144-foot long penstock; (4) a reservoir having a surface area of approximately 5 acres; (5) a proposed powerhouse with an installed generating capacity of 300 kW; and (6) appurtenant works. The Applicant proposes extensive rehabilitation of the existing works. The Applicant estimates that the average



annual energy output would be 1,576,000 kWh.

**Proposed Scope of Studies Under Permit**—A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of two years, during which time Applicant would investigate the engineering, economic and environmental aspects of the project. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for license or exemption from licensing. Applicant estimates the cost of studies under the permit would be \$10,000.

**Competing Applications**—Anyone desiring to file a competing application must submit to the Commission, on or before October 15, 1981, either the competing application itself [See 18 C.F.R. § 4.33(a) and (d) (1980)] or a notice of intent [See 18 C.F.R. § 4.33(b) and (c) (1980)] to file a competing application. Submission of a timely notice of intent allows an interested person to file an acceptable competing application no later than the time specified in § 4.33(c).

**Agency comments**—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies only directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

**Comments, Protests, or Petitions To Intervene**—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 C.F.R. 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protest, or petition to intervene must be received on or before October 15, 1981.

**Filing and Service of Responsive Documents**—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An

additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-23665 Filed 8-13-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP81-436-000]

### Western Gas Interstate Co.; Application

August 11, 1981.

Take notice that on July 29, 1981, Western Gas Interstate Company (Applicant), 1800 First International Building, Dallas, Texas 75270, filed in Docket No. CP81-436-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities to be used in order to continue the sale of natural gas to Southern Union Gas Company (Southern Union), a division of Southern Union Company for resale all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to construct and operate a 4-inch diameter lateral line approximately 2 miles in length parallel to an existing 2-inch lateral line known as the Plains Lateral in Moore County, Texas. Applicant states that the proposed facilities would consist of approximately 10,350 feet of 4-inch steel pipe, 20 feet of 2-inch pipe, a 4-inch valve, a 2-inch valve, a valve box and appurtenances.

Applicant states that the gas which Western uses to supply Southern Union's Plains Lateral customer requirements has been purchased from Diamond Shamrock Corporation (Shamrock). It is further stated that delivery to Applicant is made at the tailgate of Shamrock's McKee Plant and that the deliveries to customers are made at the terminus of Applicant's West Line. Applicant asserts that over the life of the purchase contracts with Shamrock the deliverability from the wells producing on the dedicated acreage thereunder has steadily decreased and that the decline in well deliverability brought with it the concomitant decrease in deliveries at the tailgate of the Shamrock plant.

Applicant further explains that it therefore is unable to meet peak day irrigation customer requirements served off the lateral because the decrease in deliveries has caused a decrease in delivery pressure. Applicant asserts that the new line would permit it to have adequate pressure on its system to provide service to customers at the tail end of the system.

Applicant estimates that the total cost of the project would be \$66,721 which cost would be financed by internally generated funds.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 31, 1981, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-23756 Filed 8-13-81; 8:45 am]

BILLING CODE 6450-85-M



[Project No. 4434-000]

**Wisconsin Public Power Inc. System;  
Application for Preliminary Permit**

August 11, 1981.

Take notice that Wisconsin Public Power Inc. System (Applicant) filed on March 27, 1981, an application for preliminary permit pursuant to the Federal Power Act, 16 U.S.C. 791 (a)-825(r) for Project No. 4434 known as the Mississippi River Lock and Dam No. 8 located on the Mississippi River in Vernon County, Wisconsin, and Houston County, Minnesota. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Richard L. Olson, Wisconsin Public Power Inc. System, P.O. Box 927, Madison, Wisconsin 53701.

**Project Description**—The proposed project would consist of: (1) a proposed powerhouse containing generating units having a total installed capacity of 17,540 kW; (2) proposed 89 KV transmission lines; and (3) appurtenant facilities. Applicant would utilize an existing dam owned by the U.S. Army Corps of Engineers, and the Applicant's facilities would be located mostly on U.S. lands. Applicant estimates that the average annual energy output would be 86,800 MWh.

**Proposed Scope of Studies Under Permit**—A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 24 months to determine the economic, environmental, and engineering feasibility of the project. In addition, Federal, State, and local government agencies would be consulted concerning the environmental effects of the project. Applicant estimates the cost of the studies would be \$62,940.

**Competing Applications**—This application was filed as a competing application to the Mississippi River Lock and Dam No. 8 Project No. 3622 filed on October 31, 1980, by Mitchell Energy Company, Inc. under 18 C.F.R. § 4.33 (1980). Public notice of the filing of the initial application has already been given and the due date for filing competing application or notices of intent has passed. Therefore, no further competing applications or notices of intent to file competing applications will be accepted for filing.

**Agency Comments**—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file

comments within the time set below, it will be presumed to have no comments.

**Comments, Protests, or Petitions To Intervene**—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 C.F.R. § 1.8 or § 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protest, or petition to intervene must be received on or before **September 11, 1981**.

**Filing and Service of Responsive Documents**—Any comments, protests, or petitions to intervene must bear in all capital letters the title "COMMENTS", "PROTEST", or "PETITION TO INTERVENE", as applicable. Any of these filings must also state that it is made in response to this notice of application for preliminary permit for Project No. 4434. Any comments, protests, or petitions to intervene must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Room 208 RB Building, Washington, D.C. 20426. A copy of any petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-23699 Filed 8-13-81; 8:45 am]

BILLING CODE 6450-85-M

**Western Area Power Administration****Floodplain/Wetlands Involvement  
Determination for Folsom-Nimbus 115-  
kV Transmission Line Replacement  
Proposal; Sacramento County, Calif.**

**AGENCY:** Western Area Power Administration, DOE.

**ACTION:** Notice of Floodplain/Wetlands Involvement and Opportunity for Comment.

**SUMMARY:** The Western Area Power Administration (Western) proposes to replace the existing 6.6 miles of the Folsom-Nimbus 115-kV transmission

line that interconnects the hydroelectric powerplants located below the Folsom and Nimbus Dams on the American River in Sacramento County, California. The transmission line, which spans the American River at three locations, was constructed in 1955. The need to replace the line is attributed to deterioration of the existing wood poles which was brought about partly by the acorn woodpeckers. The deteriorated condition of the wood poles has resulted in increased maintenance and potential hazard to both Government maintenance crews and the public. Western is proposing to replace existing wood-pole structures with steel structures.

Western has determined, based on a review of the Federal Insurance Administration's (Department of Housing and Urban Development) Flood Hazard Boundary Maps for the area and discussions with personnel of the California Department of Fish and Game, that the proposal may involve activities within floodplain/wetlands areas. As required by Department of Energy regulations 810 CRF 1022, Western will prepare a floodplain/wetland assessment. Maps and further information are available from Western at the address shown below. Public comments or suggestions regarding Western's activities in these particular floodplain/wetlands areas are invited.

**DATES:** Any comments are due on or before August 31, 1981.

**ADDRESS:** Send comments or suggestions to: Mr. David G. Coleman, Area Manager, Sacramento Area Office, Western Area Power Administration, 2800 Cottage Way, Sacramento, CA 95825.

Issued at Golden, Colorado August 3, 1981.  
William H. Clagett,  
Deputy Administrator.

[FR Doc. 81-23629 Filed 8-13-81; 8:45 am]

BILLING CODE 6450-01-M

**ENVIRONMENTAL PROTECTION  
AGENCY**

[A-6-FRL-1908-5]

**Approval of PSD Permits**

Notice is hereby given that the Environmental Protection Agency (EPA) has issued Prevention of Significant Deterioration (PSD) permits to the following:

1. Shintech, Inc. PSD-TX-327, modification of the existing polyvinyl chloride plant located at 5618 Highway 332 East in Freeport, Brazoria County, Texas;



2. Panhandle Eastern Pipeline Company, PSD-TX-320—Armor Compressor Station, PSD-TX-321—Warren Compressor Station, PSD-TX-322—Tumbleweed Compressor Station, located in Carson County, Texas;
3. Phillips Petroleum Company, PSD-TX-314, modification of the Giddings natural gas treating and conditioning plant located on State Highway 448 in Giddings, Fayette County, Texas;
4. Southwestern Portland Cement Company, PSD-TX-351, modification of the existing cement plant located on U.S. Highway 66, 18 miles west of Amarillo, Potter County, Texas;
5. Colorado Interstate Gas Company, PSD-OK-358, construction of a natural gas compressor station to be located 3 miles southeast of Forgan, Beaver County, Oklahoma;
6. Odessa Natural Gas Company, PSD-TX-368, modification of the existing gas compressor station located approximately 7 miles south of Cisco on U.S. Highway 183 in Eastland County, Texas;
7. Guardian Industries, PSD-TX-370, construction of a float glass facility to be located on U.S. Highway 287, 1.5 miles southeast of Corsicana, Navarro County, Texas;
8. Sun Gas Company, PSD-TX-372, modification of the existing Jameson natural gas processing facility located 1 mile south of Silver, Coke County, Texas;
9. Gulf States Utilities Company, PSD-LA-292, modification of the Willow Glen generating station located on State Highway 30, approximately 16 miles South of Baton Rouge and 1 mile northwest of Saint Gabriel, Iberville Parish, Louisiana;
10. Southwestern Electric Power Company, PSD-TX-130, construction of a 1440 MW coal fired steam electric generating facility to be located 11 miles southwest of Canton, Van Zandt County, Texas;
11. Mapco Alcohol Fuel, Inc., PSD-TX-374, construction of a power alcohol production facility to be located at Schroeter Industrial Park, Cactus, Moore County, Texas;
12. BASF-Wyandotte Corporation, PSD-LA-369, construction of a waste gas boiler at the Geismar Chemical Complex, Geismar, Ascension Parish, Louisiana;
13. Southwestern Portland Cement Company, PSD-TX-352, modification of the existing cement plant located on U.S. Highway 80, 20 kilometers southwest of Odessa, Ector County, Texas;
14. Shell Oil Company, PSD-TX-360, addition of 2 compressors to the existing North Cross Devonian Units CO<sub>2</sub> injection facilities located 5 miles west of McCamey on State Highway 67, Upton County, Texas;
15. Georgia-Pacific Corporation, PSD-LA-341, construction of a wood-fired boiler at the existing kraft pulp mill located on the east bank of this Mississippi River, 2 miles south-southwest of Port Hudson, East Baton Rouge Parish, Louisiana;
16. Arkansas Eastman Company, PSD-AR-311, modification of the existing chemical process plant located approximately 10 miles southwest of Batesville, Independence County, Arkansas;
17. Georgia-Pacific Corporation, PSD-AR-

317, modification of the existing wood processing plant located on 1st Avenue in Crossett, Ashley County, Arkansas;

18. Southern Natural Gas Company, PSD-LA-85 (amended) construction of 4 new reciprocating compressors and associated heaters to develop a new gas storage reservoir in the Pettit zone of the Bear Creek Field to be located near the existing facilities at the Bienville Compressor Station 1½ miles northeast of Bienville, Bienville Parish, Louisiana;

These permits have been issued under EPA's Prevention of Significant Air Quality Deterioration regulations at 40 CFR 52.21, as amended August 7, 1980. The time period established by the Consolidated Permit Regulations at 40 CFR 124.19 for petitioning the Administrator to review any condition of the permit decisions has expired. Such a petition to the Administrator is, under 5 U.S.C. 704, a prerequisite to the seeking of judicial review of the final agency action. No petitions for review of these permits have been filed with the Administrator.

Copies of the applications and permits are available for public inspection upon request at the following location: Environmental Protection Agency, Region 6, Air Enforcement Branch, 1201 Elm Street, First International Building, Dallas, Texas 75270.

Dated: July 23, 1981.

Frances Phillips,

Acting Regional Administrator, Region 6.

[FR Doc. 81-23740 Filed 8-13-81; 8:45 am]

BILLING CODE 6560-38-M

#### [A-6-FRL-1908-7]

#### Rescission of PSD Permits

Notice is hereby given that the Environmental Protection Agency (EPA) rescinded Prevention of Significant Deterioration (PSD) permits for the following:

1. PSD-LA-200—International Paper Company, for the construction of the Springhill Wood Products Complex, Springhill, Webster County, Louisiana;
2. PSD-TX-201a—International Paper Company, for the construction of the New Boston sawmill, New Boston, Bowie County, Texas;
3. PSD-TX-281a—La Gloria Oil and Gas Company, for a gasoline and diesel products terminal, Houston, Harris County, Texas;
4. PSD-TX-227a—International Business Machines, for a printed circuit panel manufacturing facility, Austin, Travis County, Texas;
5. PSD-TX-268a—International Business Machines, for a ceramic circuit substrate manufacturing facility, Austin, Travis County, Texas;
6. PSD-TX-201a—Howmet Turbine Components Corporation, for a turbine

component manufacturing facility, Wichita Falls, Wichita County, Texas;

7. PSD-AR-1711a—Norton Company, for a ceramic material production facility, Fort Smith, Sebastian County, Arkansas;

8. PSD-LA-152a—Sid Richardson Carbon and Gasoline Company, for a carbon black plant (partial rescission), Addis, West Baton Rouge Parish, Louisiana;

9. PSD-LA-187a—Milchem, Inc., for a 50 short ton barite grinding mill addition, New Orleans, Orleans Parish, Louisiana;

10. PSD-TX-210a—Milchem, Inc., for a barite grinding mill, Galveston, Galveston, Texas;

11. PSD-OK-251a—Milchem, Inc., for a barite grinding mill, Clinton, Washita County, Oklahoma;

12. PSD-TX-163a—Texas Eastman Company, for an ekasolve glycol ether plant, Longview, Harrison County, Texas;

13. PSD-OK-164a—Conoco, Inc., for a coke calciner pilot plant, Ponca City, Kay County, Oklahoma;

14. PSD-TX-207a—AMF Turbo-scope, Inc., for a pipe coating facility, Houston, Harris County, Texas.

These permits were issued under EPA's Prevention of Significant Air Quality Deterioration Regulations (40 CFR 52.21), as in effect on June 19, 1978.

Part 52.21(w) of the PSD regulations amended on August 7, 1980, states that any owner or operator of a stationary source or modification who holds a permit for the source or modification which was issued under 40 CFR 52.21, as in effect on June 19, 1978, may request that the Administrator rescind the permit or a particular portion of the permit if the applicant shows that the PSD regulations, as amended on August 7, 1980, would not apply to the source or modification. Each of these sources no longer constitutes a major stationary source since under the new definition of "potential to emit" their controlled emissions will be less than 250 tons per year for any pollutant regulated by the Act. Therefore, EPA determined that a PSD permit is no longer required for the above facilities and is giving notice that it has rescinded these permits.

Copies of the applications, permits, and rescission notices are available for public inspection upon request at the following location: Environmental Protection Agency, Region 6, Air Enforcement Branch, 1201 Elm Street, First International Building, Dallas, Texas 75270.

Dated: July 28, 1981.

Myron O. Knudson,

Acting Regional Administrator, Region 6.

[FR Doc. 81-23741 Filed 8-13-81; 8:45 am]

BILLING CODE 6560-38-M



(ER-FRL-1908-8)

**Availability of Environmental Impact Statements**

**AGENCY:** Office of Federal Activities (A-104), US Environmental Protection Agency.

**PURPOSE:** This notice lists the Environmental Impact Statements (EISs) which have been officially filed with the EPA and distributed to Federal agencies and interested groups, organizations and individuals for review pursuant to the Council on Environmental Quality's Regulations (40 CFR part 1506.9) during the week of August 3, 1981 to August 7, 1981.

**REVIEW PERIODS:** The 45-day review period for draft EISs listed in this notice is calculated from August 14, 1981 and will end on September 28, 1981, the 30-day review period for final EISs; as calculated from August 14, 1981 will end on September 14, 1981.

**EIS AVAILABILITY:** To obtain a copy of an EIS listed in this notice you should contact the Federal agency which prepared the EIS. If a Federal agency does not have the EIS available upon request you may contact the office of Federal Activities, EPA, for further information. Copies of EISs previously filed with EPA or OEQ which are no longer available from the originating agency are available with charge from the following source:

Information Resources Press, 1700 North Moore Street, Arlington, Virginia 22209 (703) 558-8270.

**FOR FURTHER INFORMATION CONTACT:** Kathi L. Wilson, Office of Federal Activities, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 (202) 245-3008.

Dated: August 11, 1981.

William N. Hedeman, Jr.,

Director, Office of Federal Activities (A-104).

**DEPARTMENT OF AGRICULTURE**

FS:Draft—Alaska Regional Plan, Standards and Guidelines, Alaska; the review period for this EIS has been extended until November 6, 1981 (EIS ORDER #810610)

SCS:Draft—Upper Chester River Watershed Plan, Delaware and Maryland (EIS ORDER #810608)  
SCS:Final—Baiting Brook Watershed Protection, Middlesex County, Massachusetts (EIS ORDER #810615)

**ARMY CORPS OF ENGINEERS**

Draft—Chesapeake City Bridge Construction, Cecil County, Maryland (EIS ORDER #810611)  
Final—Pinole Shoal and Mare Island Strait Deepening, Solano County, California (EIS ORDER #810633)

Final—Jacksonville Harbor Navigation Improvement, Duval County, Florida (EIS ORDER #810636)  
Final—Perry Creek Flood Control, Woodbury and Plymouth Counties, Iowa (EIS ORDER #810628)  
Draft Supplement—Nonconnah Creek Flood Control Plan, Mississippi and Tennessee (EIS ORDER #810624)  
Final Supplement—Taylors Bayou Drainage and Flood Control, Jefferson County, Texas (EIS ORDER #810614)  
Final Supplement—Cape May City Beach Erosion Control, Cape May County, New Jersey (EIS ORDER #810629)

**DEPARTMENT OF COMMERCE**

NOAA:Final—Chesapeake Bay Estuarine Sanctuary, Grant, Somerset and Anne Arundel Counties, Maryland (EIS ORDER #810637)

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

Draft—Applewood Village, Mortgage Insurance, Lehigh County, Pennsylvania (EIS ORDER #810622)  
Draft—Brook Hollow Development, Mortgage Insurance, Uinta County, Wyoming (EIS ORDER #810617)  
104H:Draft—National City Downtown Redevelopment, CDBG, San Diego County, California (EIS ORDER #810623)

**DEPARTMENT OF THE INTERIOR**

FWS:Final—Kealia Pond National Wildlife Refuge, Maui, Hawaii (EIS ORDER #810634)

**DEPARTMENT OF TRANSPORTATION**

FRA:Final—I-180/Hoffman Corridor, Alameda and Contra Costa Counties, California (EIS ORDER #810631)  
FHWA:Final—I-264/Watterson Expressway, Jefferson County, Kentucky (EIS ORDER #810621)  
FHWA:Final—I-69 Construction, US 127 to Existing I-69, Clinton and Shiawassee Counties, Michigan (EIS ORDER #810638)  
FHWA:Final—TN-32, US 25E, Appalachian Corridor "S", Grainger County, Tennessee (EIS ORDER #810620)  
FHWA:Final—I-27 Extension, Loop 289 North to Loop 289 South, Lubbock County, Texas (EIS ORDER #810618)  
FHWA:Final—I-10 and I-35 Improvement, Bexar County, Texas (EIS ORDER #810630)  
FRA:Final—Mystic River Bridge and Approaches, Replacement, New London County, Connecticut (EIS ORDER #810616)

**ENVIRONMENTAL PROTECTION AGENCY**

EPA1:Final—South Essex Sewerage District Relief Interceptor, Essex County, Massachusetts (EIS ORDER #810635)

EPA10:Final—City of Post Falls Wastewater Treatment Facilities, Grant, Kootenai County, Idaho (EIS ORDER #810612)

EPA10:Final—Boise, Eagle and Ada County Wastewater Management Plan, Ada County, Idaho (EIS ORDER #810613)

EPA10:Final—Spokane Wastewater Management Plan, Grant, Spokane County, Washington (EIS ORDER #810619)

EPA10:Final—Lake Washington/Green River Wastewater Management Plan, King County, Washington (EIS ORDER #810627)

**FEDERAL ENERGY REGULATORY COMMISSION**

Final—Terror Lake Hydroelectric Project, Licenses, Alaska (EIS ORDER #810626)

**GENERAL SERVICES ADMINISTRATION**

Draft—San Luis Border Station, Construction, Yuma County, Arizona (EIS ORDER #810609)

**EXTENSION:** Draft—Federal Triangle Master Plan, Washington, D.C.—published FR July 31, 1981—the review period for this EIS has been extended until September 23, 1981 (EIS ORDER #810593)

**NUCLEAR REGULATORY COMMISSION**

Draft—Washington Nuclear Project Number 2, License, Benton County, Washington (EIS ORDER #810632)

**TENNESSEE VALLEY AUTHORITY**

Final—Watts Bar Heat Utilization Demonstration Park, Rhea County, Tennessee (EIS ORDER #810625)

[FR Doc. 81-23818 Filed 8-13-81; 8:45 am]

BILLING CODE 0560-37-M

(ER-FRL-1901-1)

**Las Virgenes-Triunfo-Malibu-Topanga Areawide Facilities Plan Environmental Impact Statement (EIS); Withdrawal of Notice of Intent To Prepare an EIS**

**AGENCY:** Environmental Protection Agency, Region IX, San Francisco.

**ACTION:** Withdrawal of Notice of Intent To Prepare an Environmental Impact Statement.

**SUMMARY:** On February 9, 1979, EPA Region IX issued a Notice of Intent to prepare an Addendum Environmental Impact Statement (EIS) for the Las Virgenes-Triunfo-Malibu-Topanga Areawide Wastewater Facilities Plan (Effluent Disposal Project). EPA is withdrawing that Notice at this time due to developments that have led to the elimination of Federal grant funding for the effluent disposal project. EPA



reserves the right to initiate a new EIS or take other appropriate actions under the National Environmental Policy Act of 1969 if at some time EPA is involved in funding an effluent disposal system. If a new action is initiated, notice will be given at that time.

**DATE:** Effective August 31, 1981.

**FOR FURTHER INFORMATION CONTACT:** Kenneth H. Sutherland, California Branch, Water Division, Environmental Protection Agency, Region IX, (415) 556-8038.

Dated: August 10, 1981.

Thomas R. Sheckells,

Acting Director, Office of Federal Activities.

[FR Doc. 81-23819 Filed 8-13-81; 8:45 am]

**BILLING CODE 6560-37-M**

## FEDERAL COMMUNICATIONS COMMISSION

### Plain English VHF Marine Rules Now Available From GPO

August 5, 1981.

The Private Radio Bureau announced today that the pamphlet "How To Use Your VHF Marine Radio" is available by mail order from the U.S. Government Printing Office.

The pamphlet contains rules in Part 83, Subpart CC, which the FCC adopted last year as "simplified rules for recreational boaters." These rules were rewritten in plain language for boaters who use VHF marine radio voluntarily for their own safety and convenience.

The pamphlet also contains an appendix, "VHF Marine Channel Usage Guide," illustrating how the different VHF channels should be used. The appendix is a reprint of the popular guide first published by the Field Operations Bureau in 1979.

"How To Use Your VHF Marine Radio" may be ordered by Stock Number 004-000-00386-1 from the Superintendent of Documents, Washington, DC 20402. Single copies are \$2.50 each (\$3.15, foreign), but they are also being sold in packages of 100 for \$39.00 (\$48.75, foreign). Mail orders should include checks or money orders payable to Superintendent of Documents.

Orders may also be placed at GPO Bookstores, which are located in the following cities (listed alphabetically by State): Birmingham, AL; Los Angeles and San Francisco, CA; Denver and Pueblo, CO; Washington, DC; Jacksonville, FL; Atlanta, GA; Chicago, IL; Boston, MA; Detroit, MI; Kansas City, MO; New York, NY; Cleveland and Columbus, OH; Philadelphia, PA; Dallas and Houston, TX; Seattle, WA; and

Milwaukee, WI. Orders may also be placed on the Order form shown here.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 81-23739 Filed 8-13-81; 8:45 am]

**BILLING CODE 6712-01-M**

## FEDERAL EMERGENCY MANAGEMENT AGENCY

[Docket FEMA REP-NH-1]

### New Hampshire Radiological Emergency Response Plan

**AGENCY:** Federal Emergency Management Agency.

**ACTION:** Notice of receipt of plan.

**SUMMARY:** For continued operation of nuclear power plants, the Nuclear Regulatory Commission requires approved licensee and State and local governments' radiological emergency response plans. Since FEMA has a responsibility for reviewing the State and local government off-site plans, the State of New Hampshire, by letter of transmittal dated July 7, 1981, has submitted its radiological emergency plans to the FEMA Region I Office. These plans support the Vermont Yankee Nuclear Power Station in Vernon, VT, and the Yankee Rowe Nuclear Power Station in Rowe, MA.

**DATE PLANS RECEIVED:** July 17, 1981.

**FOR FURTHER INFORMATION CONTACT:** Mr. David M. Sparks, Regional Director, FEMA Region I, Room 444, John W. McCormack Post Office and Courthouse Building, Boston, MA 02109, 617/223-4741.

**SUPPLEMENTARY INFORMATION:** In support of the Federal requirement for emergency response plans, FEMA has proposed a Rule describing its procedures for review and approval of State and local governments' radiological emergency response plans. Pursuant to this proposed FEMA Rule (44 CFR 350.8), "Review and Approval of State Radiological Emergency Plans and Preparedness," 45 CFR 42341, the State Radiological Emergency Plan for the State of New Hampshire was received by the Federal Emergency Management Agency Region I Office.

Included are plans for local governments which are wholly or partially within the plume exposure pathway emergency planning zone of the nuclear power plants. For the Vermont Yankee Nuclear Power Station, plans are included for the towns of Chesterfield, Hinsdale, Richmond, Swanzey, Winchester, and for the City of Keene which will serve as a host

community. For the Yankee Rowe Atomic Power Station plans are included for the ingestion pathway exposure only. There are no New Hampshire towns within the 10-mile Emergency Planning Zone of the Yankee-Rowe Nuclear Power Station.

Copies of the plan are available for review at the FEMA Region I Public Affairs Office, Room 435, John W. McCormack Post Office and Courthouse Building, Boston, MA 02109. Copies will be made available upon request in accordance with the fee schedule for FEMA Freedom of Information Act requests, as set out in subpart C of 44 CFR Part 5. There are 262 pages in the document; reproduction fees are \$.10 a page payable with the request for copy.

Copies of the plan are also available from the State of New Hampshire Civil Defense Agency, One Airport Road, Concord, NH 03301.

Comments on the plan may be submitted in writing to Mr. David M. Sparks, Regional Director, at the above address on or before September 14, 1981.

FEMA proposed Rule 44 CFR 350.10 also calls for a public meeting prior to approval of the plan. Details of this meeting will be announced in the "Keene Sentinel" and the "Winchester Star", at least two weeks prior to the scheduled meeting. Local radio and television stations will be requested to announce the meeting.

David M. Sparks,

Regional Director.

July 28, 1981.

[FR Doc. 81-23639 Filed 8-13-81; 8:45 am]

**BILLING CODE 6718-01-M**

## FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

### Proposed Accounting Guideline; Accrual Accounting; Request for Comment

**AGENCY:** Federal Financial Institutions Examination Council.

**ACTION:** Proposed accounting guideline—accrual accounting.

**SUMMARY:** The Federal Financial Institutions Examination Council has under consideration a proposal to recommend a uniform accounting guideline for adoption by the three federal bank supervisory agencies (the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency). This guideline would require the use of accrual accounting by all insured commercial and state chartered mutual



savings banks both for the maintenance of accounts and for reports to the agencies. The Council is considering this proposal in light of its responsibilities to promote consistent and effective supervisory practices among these agencies.

**EFFECTIVE DATE:** Comments on this proposed accounting guideline must be received on or before October 15, 1981.

**ADDRESS:** Comments should be sent to the Executive Secretary, Federal Financial Institutions Examination Council, 490 L'Enfant Plaza, S.W., Washington, D.C. 20219. (Area code 202-447-0939) Comments will be available for public inspection and photocopying.

**FOR FURTHER INFORMATION CONTACT:** Rhoger H. Pugh, Chairman, Reports Task Force, Federal Financial Institutions Examination Council, 490 L'Enfant Plaza, S.W., Washington, D.C. 20219. (Area code 202-447-1587).

**SUPPLEMENTARY INFORMATION:** *Drafting information:* The principal drafter of this document was: Rhoger H. Pugh, Chairman, Reports Task Force, Federal Financial Institutions Examination Council.

The proposal under consideration by the Council is based on concern that accrual accounting its pertinent and necessary to the accuracy of financial reports used for internal management, shareholder, and other public disclosure and regulatory purposes.

If the Council elects to recommend to the agencies that accrual accounting be required, all insured commercial and state chartered mutual savings banks would have to maintain their accounts and prepare their Reports of Condition and Income on an accrual accounting basis. This requirement would become effective as of January 1, 1983 for banks with assets of \$10 million or more, and on January 1, 1985 for banks with assets of less than \$10 million. However, banks choosing to report Trust Department income on a cash basis could do so.

Banks in both size categories that currently maintain their books on a modified cash basis would be encouraged to convert to an accrual system prior to the dates specified above.

Accrual accounting means the establishment of recording procedures whereby all material items of income and expense are consistently recognized in the periods in which they are earned and incurred.

**Background:** Beginning in 1969, banks with assets of more than \$50 million were required to file their Reports of Condition and Income on an accrual basis. In 1970, that criterion was reduced to \$25 million. Smaller banks

have been allowed to report on a modified cash basis since 1969, i.e., income and expenses may be reported on a cash basis except for installment credit loan income, bond premium amortization, depreciation of fixed assets and income taxes which must be reported on an accrual basis. These reporting standards have lead virtually all banks over 425 million in assets to adopt accrual accounting for internal bookkeeping purposes as well. Over the last several years both the Federal Deposit Insurance Corporation and the Office of the Comptroller of the Currency have required new banks to institute accrual accounting as a condition of being chartered or insured. Furthermore, many banks with assets of less than \$25 million have voluntarily adopted accrual accounting.

**Rationale for the Proposal:** There is some concern that those Reports of Condition and Income filed with the three federal bank supervisory agencies that are prepared on a modified cash basis do not satisfactorily portray a bank's financial position and results of operation, thereby making it more difficult for the agencies to discharge their supervisory responsibilities. Also, to the extent that reports prepared on a modified cash basis are relied upon by the public, there is concern that the financial data presented therein may also be subject to misinterpretation. Furthermore, bank financial records maintained on a modified cash basis may not provide management, including bank directors, with reliable information to measure the bank's financial performance and reports prepared from such records may not provide shareholders with an adequate presentation of the bank's financial condition.

Accrual accounting requires recognition of revenues and expenses in the periods to which they are attributable. Under a cash basis accounting system, revenues and expenses are recorded when cash is received or remitted. In cases where cash flows associated with assets and liabilities do not occur regularly over the life of an instrument that spans more than one accounting period, significant distortions may result from use of a cash basis.

In the past when interest rates were lower and less volatile, banks with stable patterns of operation were likely to have reported similar results of operation using either accounting method. However, the operating results reported on a cash basis and those derived from accrual accounting may differ significantly in the current

environment of rapidly changing banking practices, portfolio patterns, and interest rates. The loss of traditional low cost deposits and increased competition have forced banks to offer new higher cost deposit instruments and services. Financial information derived from cash basis accounting does not reflect the effects of such changes in a timely manner. Conversely, accrual accounting, by recording the effects of such changes as they occur, provides a more timely portrayal of an institution's performance and condition, and is more pertinent to the needs of management, shareholders, and supervisors. Even if, as has been suggested, the managers of small banks have a "good feel" for their institutions' performance, or succeed, in an informal way, in adjusting cash basis records to reflect major accrual items for internal bank use, other users of bank financial data, including minority shareholders and regulators, would not have access to such impressions or adjustments.

**Cost and Benefits of the Proposal:** Requiring smaller banks to adopt accrual accounting would impose some burden on affected institutions. In an effort to minimize the immediate impact of that burden, the Council contemplates a fairly long lead time for the implementation of the proposed guidelines. The smallest of the affected banks, those with assets of less than \$10 million, would be given three full calendar years to plan for and implement conversion.

A survey undertaken by the Council in March revealed that of 7,500 banks with resources of less than \$25 million, approximately 3,800 were reporting on a modified cash basis. Of these about 2,100 banks have assets of between \$10-425 million and 1,700 have assets of less than \$10 million.

#### Survey Estimates of Number of Insured Commercial Banks With Assets of Less Than \$25 Million

(Reporting on accrual vs modified cash basis)

| Size group         | Accrual and percentage | Modified cash and percentage | Total and percentage |
|--------------------|------------------------|------------------------------|----------------------|
| Under \$10 million | 1,102 39               | 1,728 81                     | 2,830 100            |
| \$10-\$25 million  | 2,617 56               | 2,059 44                     | 4,676 100            |
| Total              | 3,719 50               | 3,787 50                     | 7,506 100            |

The survey also endeavored to ascertain the costs associated with conversion to and maintenance of an accrual accounting system. The survey results indicated a median cost to convert from a modified cash to an accrual basis of approximately \$2,000 per bank plus additional operating costs



of \$1,000 per year. Thus, the cost to the 3,800 affected banks would aggregate about \$8 million, with additional operating expenses for those banks, aggregating \$4 million per year.

Since virtually all new banks must adopt accrual accounting, it has been suggested that the continuing effects of inflation would eventually result in a disappearance of cash basis accounting in banks as bank footings grow. However, an analysis of the growth rates of banks in various size groups below \$25 million has revealed that it would likely take seven years for the average bank which currently has assets between \$10-\$25 million to reach the \$25 million threshold, and sixteen years for the average bank which now has assets of less than \$10 million to attain a size of \$25 million.

The adoption of the proposed accrual accounting guideline would assure certain benefits for the banking industry and the public. The accounting records maintained by all banks would conform to general accounting standards for recognition of income and expense. Bank management and directors would be able to evaluate their institution's current performance and plan for the future using financial data free from the distortions associated with cash basis accounting. Publicly available financial data from these institutions would be a more reliable source of information for shareholders and other interested parties. The regulatory agencies would benefit from better and more comparable data for supervisory purposes.

Such benefits, though clearly identifiable and generally acknowledged, cannot be readily measured in dollar terms to make a direct comparison with the costs of conversion and maintenance identified by the survey. There is, however, one element of these benefits accruing to affected banks themselves that can be approximated in dollars. If the regulatory agencies can rely on the monitoring of individual banks through analysis of regularly reported data, the frequency of on-site examinations could be reduced. Such reliance depends in considerable part upon the confidence which the agencies can reasonably be expected to place in the surveillance system used to carry out monitoring of bank financial condition. That confidence is greatly enhanced for those institutions which utilize accrual accounting.

To the extent that well managed institutions are examined less frequently, the costs incurred by these banks in connection with on-site

examinations will decrease. Some estimates have indicated that these costs amount to approximately \$2,000 per examination for banks under \$25 million in assets. If the frequency of examinations were reduced by 20%, and affected 3,500 institutions, it can be calculated that in the aggregate, \$1.4 million per year would be saved by these banks. These are rough estimates and the Examination Council is particularly desirous to receive comments on the cost to banks of on-site examinations and on the desirability of limiting them.

Beyond the reduction in costs for affected institutions which might be achieved as a result of decreased examination frequency, the costs of those on-site examinations that are conducted would be reduced if such examinations could be targeted to concentrate on particular problem areas within the bank. The General Accounting Office has urged the bank regulatory agencies to develop systems and procedures to permit such concentration of examination effort. As accrual accounting would improve regulator confidence in monitoring systems, it would also serve this objective as well.

Lastly, monitoring and surveillance systems fulfill a public responsibility which devolves upon the regulatory agencies to identify problem institutions in a timely and efficient manner. Again, to the extent that accrual accounting enhances monitoring systems, this public obligation is served.

*Issues for Specific Comment:* The Examination Council seeks comments on any and all of the aspects of this proposal, but would particularly appreciate comments addressing the following points:

1. The suitability of applying the proposed guideline to all banks or only to banks over a certain size.
2. The time periods allowed for implementation of the proposed guideline.
3. The estimated costs experienced by banks in connection with on-site examinations.
4. The benefits to be derived by affected institutions in relation to the costs which they would actually incur pursuant to conversion to accrual accounting.
5. The rank or relative worth of the benefits discussed under the heading, "Cost and Benefits of the Proposal."

Comments by affected banks and other financial institutions, the public, banking trade associations, the accounting profession, and state

regulatory authorities are earnestly requested.

Dated: August 10, 1981.

Robert J. Lawrence,

*Executive Secretary, Federal Financial Institutions Examination Council.*

[FR Doc. 81-23051 Filed 8-13-81; 8:45 am]

BILLING CODE 6722-01-M

## FEDERAL MARITIME COMMISSION

[Agreements Nos. T-3979, T-3979-A, T-3980 and T-3980-A]

### Puerto Rico Ports Authority and Puerto Rico Maritime Shipping Authority; Availability of Finding of No Significant Impact

Upon completion of an environmental assessment, the Federal Maritime Commission's Office of Energy and Environmental Impact has determined that the Commission's decision on Agreements Nos. T-3979, T-3979-A, T-3980 and T-3980-A will not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, and that preparation of an environmental impact statement is not required. Under the terms of Agreements Nos. T-3979 and T-3980, between the Puerto Rico Ports Authority (Authority) and the Puerto Rico Maritime Shipping Authority (PRMSA), PRMSA will be granted a right of preference to docking and mooring of vessels and the use of marine terminal facilities located in areas at Puerto Nuevo, Puerto Rico designated as Lot JK-1 (Piers J and K) and Lot B (Pier L). Agreements Nos. T-3979-A and T-3980-A, between the same parties, lease to PRMSA for its exclusive use certain backup and marshalling areas at Puerto Nuevo, designated as Lot JK-2 (Piers J and K) and Lot A (Pier L).

This Finding of No Significant Impact (FONSI) will become final within 10 days unless a petition for review is filed pursuant to 46 C.F.R. 547.6(b).

The FONSI and related environmental assessment are available for inspection on request from the Office of the Secretary, Room 11101, Federal Maritime Commission, Washington, D.C. 20573, telephone (202) 523-5725.

Francis C. Hurney,

*Secretary.*

[FR Doc. 81-23737 Filed 8-13-81; 8:45 am]

BILLING CODE 6730-01-M



**[Agreement No. 9718-8]****Japan Line, Ltd., et al.; Availability of Finding of No Significant Impact**

Upon completion of an environmental assessment, the Federal Maritime Commission's Office of Energy and Environmental Impact has determined that the Commission's decision on Agreement Nos. 9718-8 will not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, 42 U.S.C. § 4321 *et seq.*, and that preparation of an environmental impact statement is not required. Under the terms of the agreement, Japan Line, Ltd., Kawasaki Kisen Kaisha, Ltd., Mitsui O.S.K. Lines, Ltd. (MOL) and Yamashita-Shinnihon Steamship Co., Ltd. (Y.S. Line) will be permitted to replace two old vessels with two new larger ones, this increasing the total number of TEU's parties can carry pursuant to the agreement.

This Finding of No Significant Impact (FONSI) will become final within 20 days unless a petition for review is filed pursuant to 46 C.F.R. 547.6(b).

The FONSI and related environmental assessment are available for inspection on request from the Office of the Secretary, Room 11101, Federal Maritime Commission, Washington, D.C. 20573, telephone (202) 523-5725.

Francis C. Hurney,  
Secretary.

[FR Doc. 81-23775 Filed 8-13-81; 8:45 am]  
BILLING CODE 6730-01-M

**[Agreement No. T-3983]****North Carolina Ports Authority and Trans-Freight Lines, Inc.; Availability of Finding of No Significant Impact**

Upon completion of an environmental assessment, the Federal Maritime Commission's Office of Energy and Environmental Impact has determined that the Commission's decision on Agreement No. T-3983 will not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, 42 U.S.C. § 4321 *et seq.*, and that preparation of an environmental impact statement is not required. The agreement is between North Carolina State Ports Authority (PA) and Trans-Freight Lines, Inc. (TFL). Under the terms of the agreement, PA will lease 7.5 acres of land at the Port of Wilmington, North Carolina to TFL for handling cargoes, containers, vehicles, and storage of cargoes incidental to the

operations of TFL as a containership service.

This Finding of No Significant Impact (FONSI) will become final within 20 days unless a petition for review is filed pursuant to 46 C.F.R. 547.6(b).

The FONSI and related environmental assessment are available for inspection on request from the Office of the Secretary, Room 11101, Federal Maritime Commission, Washington, D.C. 20573, telephone (202) 523-5725.

Francis C. Hurney,  
Secretary.

[Doc. 81-23776 Filed 8-13-81; 8:45 am]  
BILLING CODE 6730-01-M

**Application for Exemption From Domestic Trade Tariff Filing and Financial Reporting Requirements; Puget Sound Tug and Barge Co.**

Notice is hereby given that an application has been filed with the Commission by Puget Sound Tug and Barge Company pursuant to section 35 of the Shipping Act, 1916, for exemption from the Intercoastal Shipping Act, 1933, and the Shipping Act, 1916, as amended, and regulations applicable thereunder, to extend its currently effective exemption (41 FR 6070), scheduled to expire December 31, 1981, indefinitely or at least for a period of seven years beyond 1981 applicable to its North Slope operation.

Interested parties may inspect and obtain a copy of this application at the Washington Office of the Federal Maritime Commission, 1100 L Street, N.W., Room 10223, or may inspect the application at the Field Offices located at New York, New York; New Orleans, Louisiana; San Francisco, California; Chicago, Illinois and Hato Rey, Puerto Rico. Interested persons may submit comments to the Secretary, Federal Maritime Commission, Washington, D.C., by September 3, 1981. An original and fifteen copies of such comments shall be submitted and a copy thereof served on applicant.

Francis C. Hurney,  
Secretary.

[FR Doc. 81-23564 Filed 8-13-81; 8:45 am]  
BILLING CODE 6730-01-M

**FEDERAL PREVAILING RATE ADVISORY COMMITTEE****Open Committee Meetings**

Pursuant to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on:

Thursday, September 3, 1981

Thursday, September 24, 1981

These meetings will convene at 10 a.m., and will be held in Room 5A06A, Office of Personnel Management Building, 1900 E Street, NW, Washington, D.C.

The Federal Prevailing Rate Advisory Committee is composed of a Chairman, representatives of five labor unions holding exclusive bargaining rights for Federal blue-collar employees, and representatives of five Federal agencies. Entitlement to membership of the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the prevailing rate system and other matters pertinent to the establishment of prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management thereon.

These scheduled meetings will convene in open session with both labor and management representatives attending. During the meeting either the labor members or the management members may caucus separately with the Chairman to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would impair to an unacceptable degree the ability of the Committee to reach a consensus on the matters being considered and disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public on the basis of a determination made by the Director of the Office of Personnel Management under the provisions of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92-463) and 5 U.S.C. 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of the meeting.

Annually, the Committee publishes for the Office of Personnel Management, the President, and Congress a comprehensive report of pay issues discussed, concluded recommendations thereon, and related activities. These reports are also available to the public, upon written request to the Committee Secretary.

Members of the public are invited to submit material in writing to the Chairman concerning Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information concerning these meetings may be obtained by contacting the Committee Secretary, Federal Prevailing Rate Advisory Committee, Room 1340,



1900 E Street, NW, Washington, D.C.  
20415 (202-632-9710).

Dated: August 10, 1981.

William B. Davidson, Jr.,

*Chairman, Federal Prevailing Rate Advisory  
Committee.*

[FR Doc. 81-23653 Filed 8-13-81; 8:45 am]

BILLING CODE 6525-01-M

#### FEDERAL TRADE COMMISSION

##### **"Tar," Nicotine and Carbon Monoxide Content of the Smoke of 187 Varieties of Cigarettes: Correction**

**AGENCY:** Federal Trade Commission.

**ACTION:** Correction of the Report on the  
"Tar," Nicotine and Carbon Monoxide  
Content of the Smoke of 187 Varieties of  
Cigarettes published in the *Federal  
Register* on May 28, 1981.

**SUMMARY:** This document corrects a  
Commission document previously  
published in the *Federal Register* on  
May 28, 1981. Due to a computer  
programming error, the Table of the  
smoke of 187 varieties of cigarettes  
contained carbon monoxide figures  
which were each approximately 8  
percent too high.

##### **FOR FURTHER INFORMATION CONTACT:**

Matthew L. Myers, Bureau of Consumer  
Protection, Federal Trade Commission,  
Washington, D.C. 20580 (202-724-1464)  
or Harold Pillsbury, Bureau of Consumer  
Protection, Federal Trade Commission,  
Washington, D.C. 20580 (202-523-3559).

**SUPPLEMENTARY INFORMATION:** In FR  
Doc. 81-15726, appearing in the *Federal  
Register* issue for May 28, 1981, 46 FR  
28747, the Commission published figures  
on the "tar," nicotine and carbon  
monoxide content of the smoke of 187

varieties of domestic cigarettes. Due to a  
computer programming error, the  
calculations which produced the carbon  
monoxide figures included in that  
publication were inaccurate. The  
correct, recalculated carbon monoxide  
figures are included in the table which  
follows. Each of these figures is  
precisely 8 percent less than the figures  
previously reported.

The computer program error which  
affected the accuracy of the carbon  
monoxide figures previously published  
does not in any way affect the accuracy  
of the "tar" and nicotine figures  
published on May 28, 1981, nor does it  
affect relative ranking of the domestic  
cigarette brands tested in terms of the  
carbon monoxide content of the smoke  
of these cigarettes.

BILLING CODE 6750-01-M



**TAR<sup>1</sup>, NICOTINE<sup>2</sup> and CARBON MONOXIDE CONTENT  
of ONE-HUNDRED EIGHTY-SEVEN (187) VARIETIES  
of DOMESTIC CIGARETTES**

| BRAND                  | TYPE                                 | TAR<br>(mg/cig) | NICOTINE<br>(mg/cig) | CARBON MONOXIDE<br>(mg/cig) |
|------------------------|--------------------------------------|-----------------|----------------------|-----------------------------|
| Alpine                 | king size, filter, menthol           | 15              | 1.0                  | 15                          |
| American Lights        | 120 mm, filter                       | 8               | 0.7                  | 8                           |
| American Lights        | 120 mm, filter, menthol              | 9               | 0.8                  | 9                           |
| Arctic Lights          | king size, filter, menthol           | 8               | 0.7                  | 9                           |
| Arctic Lights          | 100 mm, filter, menthol              | 8               | 0.7                  | 10                          |
| Aspen                  | king size, filter, menthol           | 9               | 0.8                  | 10                          |
| Aspen                  | 100 mm, filter, menthol              | 9               | 0.8                  | 9                           |
| Belair                 | king size, filter, menthol           | 9               | 0.8                  | 10                          |
| Belair                 | 100 mm, filter, menthol              | 8               | 0.7                  | 9                           |
| Benson & Hedges        | reg. size, filter, (hard pack)       | 1               | 0.1                  | 1                           |
| Benson & Hedges        | king size, filter, (hard pack)       | 16              | 1.3                  | 13                          |
| Benson & Hedges 100's  | 100 mm, filter, (hard pack)          | 15              | 1.1                  | 16                          |
| Benson & Hedges 100's  | 100 mm, filter, menthol, (hard pack) | 16              | 1.1                  | 16                          |
| Benson & Hedges 100's  | 100 mm, filter                       | 16              | 1.1                  | 16                          |
| Benson & Hedges 100's  | 100 mm, filter, menthol              | 16              | 1.1                  | 17                          |
| Benson & Hedges Lights | 100 mm, filter                       | 10              | 0.8                  | 13                          |
| Benson & Hedges Lights | 100 mm, filter, menthol              | 10              | 0.8                  | 12                          |
| Brookwood              | king size, filter, menthol           | 7               | 0.7                  | 8                           |
| Bull Durham            | king size, filter                    | 27              | 1.8                  | 24                          |
| Camel*                 | reg. size, non-filter                | 25              | 1.9                  | 17                          |
| Camel*                 | king size, filter                    | 19              | 1.4                  | 19                          |
| Camel Lights*          | king size, filter                    | 10              | 0.9                  | 11                          |
| Camel Long Lights      | 100 mm, filter                       | 12              | 1.0                  | 15                          |
| Carlton                | king size, filter, (hard pack)       | <0.5            | 0.1                  | <1                          |
| Carlton*               | king size, filter                    | 1               | 0.1                  | 2                           |
| Carlton                | king size, filter, menthol           | 1               | 0.1                  | 1                           |
| Carlton                | 100 mm, filter                       | 4               | 0.4                  | 6                           |
| Carlton                | 100 mm, filter, menthol              | 4               | 0.4                  | 6                           |
| Chesterfield*          | reg. size, non-filter                | 23              | 1.4                  | 15                          |
| Chesterfield*          | king size, non-filter                | 27              | 1.7                  | 18                          |
| Chesterfield*          | king size, filter                    | 15              | 1.0                  | 15                          |
| Chesterfield*          | 101 mm, filter                       | 16              | 1.1                  | 17                          |
| Decade                 | king size, filter                    | 5               | 0.4                  | 3                           |
| Decade                 | king size, filter, menthol           | 4               | 0.4                  | 3                           |
| Decade                 | 100 mm, filter                       | 9               | 0.7                  | 7                           |
| Doral                  | king size, filter                    | 12              | 0.9                  | 11                          |
| Doral                  | king size, filter, menthol           | 12              | 0.9                  | 11                          |
| Doral II               | king size, filter                    | 5               | 0.4                  | 4                           |
| Doral II               | king size, filter, menthol           | 5               | 0.4                  | 4                           |
| DuMaurier              | king size, filter, (hard pack)       | 14              | 1.0                  | 17                          |
| English Ovals          | reg. size, non-filter, (hard pack)   | 22              | 1.7                  | 12                          |
| English Ovals          | king size, non-filter, (hard pack)   | 28              | 2.3                  | 14                          |
| Eve                    | 100 mm, filter                       | 15              | 1.1                  | 16                          |
| Eve                    | 100 mm, filter, menthol              | 15              | 1.1                  | 15                          |
| Eve                    | 120 mm, filter, (hard pack)          | 14              | 1.1                  | 13                          |
| Eve                    | 120 mm, filter, menthol, (hard pack) | 12              | 1.0                  | 11                          |
| Fatima                 | king size, non-filter                | 26              | 1.7                  | 18                          |
| Galaxy                 | king size, filter                    | 16              | 1.0                  | 17                          |
| Golden Lights          | king size, filter                    | 8               | 0.8                  | 8                           |
| Golden Lights          | king size, filter, menthol           | 8               | 0.7                  | 8                           |
| Golden Lights 100's    | 100 mm, filter                       | 8               | 0.7                  | 8                           |
| Golden Lights 100's    | 100 mm, filter, menthol              | 8               | 0.7                  | 9                           |
| Half & Half*           | king size, filter                    | 20              | 1.6                  | 17                          |
| Herbert Tareyton       | king size, non-filter                | 27              | 1.7                  | 19                          |
| Home Run               | reg. size, non-filter                | 21              | 1.3                  | 19                          |
| Iceberg 100's          | 100 mm, filter, menthol              | 3               | 0.3                  | 5                           |
| Kent Micronite II      | king size, filter, (hard pack)       | 12              | 1.0                  | 12                          |
| Kent Micronite II      | king size, filter                    | 12              | 1.0                  | 13                          |
| Kent III               | king size, filter                    | 3               | 0.3                  | 3                           |

\* These cigarette brands have been reformulated. See accompanying text.

TPM dry (tar)—milligrams total particulate matter less nicotine and water.

<sup>2</sup> Milligrams total alkaloids reported as nicotine.



| BRAND                  | TYPE                                    | TAR<br>(mg/cig) | NICOTINE<br>(mg/cig) | CARBON MONOXIDE<br>(mg/cig) |
|------------------------|-----------------------------------------|-----------------|----------------------|-----------------------------|
| Kent Micronite II      | 100 mm, filter                          | 15              | 1.1                  | 14                          |
| Kent Micronite II      | 100 mm, filter, menthol                 | 14              | 1.2                  | 14                          |
| Kent III               | 100 mm, filter                          | 4               | 0.5                  | 6                           |
| Kool                   | reg. size, non-filter, menthol          | 18              | 1.1                  | 14                          |
| Kool                   | king size, filter, menthol, (hard pack) | 16              | 1.3                  | 17                          |
| Kool                   | king size, filter, menthol              | 15              | 1.2                  | 17                          |
| Kool Milds*            | king size, filter, menthol              | 12              | 0.9                  | 13                          |
| Kool Super Lights*     | king size, filter, menthol              | 7               | 0.6                  | 8                           |
| Kool                   | 100 mm, filter, menthol                 | 15              | 1.1                  | 18                          |
| Kool Milds 100's       | 100 mm, filter, menthol                 | 12              | 1.0                  | 13                          |
| Kool Super Lights      | 100 mm, filter, menthol                 | 8               | 0.7                  | 10                          |
| Kool International     | 100 mm, filter, menthol, (hard pack)    | 9               | 0.7                  | 10                          |
| L & M                  | king size, filter, (hard pack)          | 15              | 1.0                  | 15                          |
| L & M*                 | king size, filter                       | 15              | 1.0                  | 16                          |
| L & M Lights           | king size, filter                       | 8               | 0.7                  | 5                           |
| L & M*                 | 100 mm, filter                          | 16              | 1.1                  | 17                          |
| L & M Lights           | 100 mm, filter                          | 8               | 0.7                  | 6                           |
| L & M                  | 100 mm, filter, menthol                 | 16              | 1.1                  | 17                          |
| Lark*                  | king size, filter                       | 16              | 1.1                  | 16                          |
| Lark II                | king size, filter                       | 8               | 0.6                  | 8                           |
| Lark Lights            | king size, filter                       | 8               | 0.6                  | 8                           |
| Lark*                  | 100 mm, filter                          | 17              | 1.2                  | 18                          |
| Lark Lights 100's      | 100 mm, filter                          | 7               | 0.6                  | 7                           |
| Long Johns             | 120 mm, filter                          | 16              | 1.3                  | 18                          |
| Long Johns             | 120 mm, filter, menthol                 | 14              | 1.2                  | 17                          |
| Lucky Strike           | reg. size, non-filter                   | 23              | 1.3                  | 17                          |
| Lucky Ten              | king size, filter                       | 8               | 0.6                  | 10                          |
| Lucky 100's            | 100 mm, filter                          | 3               | 0.3                  | 5                           |
| Marlboro               | king size, filter, (hard pack)          | 16              | 1.0                  | 15                          |
| Marlboro               | king size, filter, menthol, (hard pack) | 15              | 1.0                  | 13                          |
| Marlboro               | king size, filter                       | 16              | 1.1                  | 16                          |
| Marlboro Lights*       | king size, filter                       | 11              | 0.8                  | 13                          |
| Marlboro               | king size, filter, menthol              | 14              | 0.9                  | 14                          |
| Marlboro               | 100 mm, filter, (hard pack)             | 16              | 1.1                  | 16                          |
| Marlboro               | 100 mm, filter                          | 16              | 1.1                  | 16                          |
| Marlboro Lights        | 100 mm, filter                          | 11              | 0.8                  | 14                          |
| Max                    | 120 mm, filter                          | 17              | 1.5                  | 17                          |
| Max                    | 120 mm, filter, menthol                 | 18              | 1.5                  | 17                          |
| Merit*                 | king size, filter                       | 8               | 0.6                  | 11                          |
| Merit                  | king size, filter, menthol              | 7               | 0.5                  | 10                          |
| Merit                  | 100 mm, filter                          | 9               | 0.7                  | 11                          |
| Merit                  | 100 mm, filter, menthol                 | 10              | 0.8                  | 12                          |
| Montclair              | king size, filter, menthol              | 16              | 1.0                  | 16                          |
| More                   | 120 mm, filter                          | 22              | 1.7                  | 24                          |
| More                   | 120 mm, filter, menthol                 | 22              | 1.8                  | 24                          |
| Multifilter            | king size, filter                       | 11              | 0.8                  | 11                          |
| Multifilter            | king size, filter, menthol              | 12              | 0.8                  | 12                          |
| Newport                | king size, filter, menthol, (hard pack) | 15              | 1.2                  | 16                          |
| Newport                | king size, filter, menthol              | 17              | 1.3                  | 18                          |
| Newport Lights         | king size, filter, menthol              | 10              | 0.9                  | 11                          |
| Newport                | 100 mm, filter, menthol                 | 20              | 1.6                  | 21                          |
| Now                    | king size, filter, (hard pack)          | 2               | 0.2                  | 2                           |
| Now                    | king size, filter                       | 2               | 0.3                  | 3                           |
| Now                    | king size, filter, menthol, (hard pack) | 2               | 0.2                  | 3                           |
| Now                    | king size, filter, menthol              | 2               | 0.2                  | 3                           |
| Oasis*                 | king size, filter, menthol              | 16              | 1.1                  | 15                          |
| Old Gold Straights     | king size, non-filter                   | 25              | 1.6                  | 18                          |
| Old Gold Filters       | king size, filter                       | 17              | 1.3                  | 18                          |
| Old Gold Lights        | king size, filter                       | 9               | 0.8                  | 10                          |
| Old Gold 100's         | 100 mm, filter                          | 18              | 1.5                  | 18                          |
| Pall Mall              | king size, non-filter                   | 24              | 1.5                  | 17                          |
| Pall Mall              | king size, filter                       | 17              | 1.1                  | 18                          |
| Pall Mall Extra Lights | king size, filter                       | 7               | 0.6                  | 7                           |
| Pall Mall              | 100 mm, filter                          | 17              | 1.3                  | 17                          |
| Pall Mall Lights*      | 100 mm, filter                          | 11              | 0.9                  | 12                          |

\* These cigarette brands have been reformulated. See accompanying text.



| BRAND                       | TYPE                                    | TAR<br>(mg/cig) | NICOTINE<br>(mg/cig) | CARBON MONOXIDE<br>(mg/cig) |
|-----------------------------|-----------------------------------------|-----------------|----------------------|-----------------------------|
| Pall Mall Lights            | 100 mm, filter, menthol                 | 12              | 1.0                  | 12                          |
| Parliament Lights           | king size, filter, (hard pack)          | 8               | 0.6                  | 9                           |
| Parliament Lights           | king size, filter                       | 9               | 0.7                  | 10                          |
| Parliament Lights 100's     | 100 mm, filter                          | 11              | 0.9                  | 11                          |
| Philip Morris               | reg. size, non-filter                   | 22              | 1.5                  | 13                          |
| Philip Morris Commander     | king size, non-filter                   | 25              | 1.7                  | 15                          |
| Philip Morris International | 100 mm, filter, (hard pack)             | 17              | 1.2                  | 18                          |
| Philip Morris International | 100 mm, filter, menthol, (hard pack)    | 17              | 1.1                  | 17                          |
| Picayune                    | reg. size, non-filter                   | 22              | 1.4                  | 20                          |
| Piedmont                    | reg. size, non-filter                   | 22              | 1.3                  | 14                          |
| Players                     | reg. size, non-filter, (hard pack)      | 24              | 1.9                  | 14                          |
| Raleigh                     | king size, non-filter                   | 23              | 1.4                  | 17                          |
| Raleigh                     | king size, filter                       | 15              | 1.0                  | 18                          |
| Raleigh Lights              | king size, filter                       | 9               | 0.7                  | 10                          |
| Raleigh                     | 100 mm, filter                          | 16              | 1.1                  | 19                          |
| Raleigh Lights 100's        | 100 mm, filter                          | 8               | 0.8                  | 11                          |
| Real                        | king size, filter                       | 10              | 0.9                  | 11                          |
| Real                        | king size, filter, menthol              | 9               | 0.8                  | 9                           |
| St. Moritz*                 | 100 mm, filter                          | 15              | 1.1                  | 15                          |
| St. Moritz                  | 100 mm, filter, menthol                 | 14              | 1.1                  | 14                          |
| Salem                       | king size, filter, menthol, (hard pack) | 16              | 1.2                  | 17                          |
| Salem*                      | king size, filter, menthol              | 16              | 1.1                  | 17                          |
| Salem Lights*               | king size, filter, menthol              | 11              | 0.9                  | 13                          |
| Salem*                      | 100 mm, filter, menthol                 | 19              | 1.5                  | 18                          |
| Salem Lights                | 100 mm, filter, menthol                 | 11              | 1.0                  | 12                          |
| Saratoga                    | 120 mm, filter, (hard pack)             | 15              | 1.1                  | 17                          |
| Saratoga                    | 120 mm, filter, menthol, (hard pack)    | 15              | 1.1                  | 15                          |
| Silva Thins                 | 100 mm, filter                          | 13              | 1.1                  | 11                          |
| Silva Thins                 | 100 mm, filter, menthol                 | 11              | 0.9                  | 10                          |
| Spring 100's                | 100 mm, filter, menthol                 | 19              | 1.1                  | 18                          |
| Tall                        | 120 mm, filter                          | 16              | 1.3                  | 19                          |
| Tall                        | 120 mm, filter, menthol                 | 15              | 1.2                  | 17                          |
| Tareyton                    | king size, filter                       | 14              | 0.9                  | 16                          |
| Tareyton Lights*            | king size, filter                       | 7               | 0.6                  | 8                           |
| Tareyton Ultra Low Tar      | king size, filter, menthol              | 1               | 0.2                  | 1                           |
| Tareyton                    | 100 mm, filter                          | 14              | 1.0                  | 17                          |
| Tareyton Long Lights*       | 100 mm, filter                          | 7               | 0.6                  | 8                           |
| Tempo                       | king size, filter                       | 7               | 0.6                  | 8                           |
| Triumph                     | king size, filter                       | 3               | 0.4                  | 3                           |
| Triumph                     | king size, filter, menthol              | 3               | 0.4                  | 3                           |
| True                        | king size, filter                       | 5               | 0.4                  | 5                           |
| True                        | king size, filter, menthol              | 5               | 0.4                  | 6                           |
| True                        | 100 mm, filter                          | 8               | 0.6                  | 9                           |
| True                        | 100 mm, filter, menthol                 | 7               | 0.6                  | 9                           |
| Twist                       | 100 mm, filter, lemon/menthol           | 16              | 1.2                  | 16                          |
| Vantage*                    | king size, filter                       | 10              | 0.8                  | 15                          |
| Vantage*                    | king size, filter, menthol              | 10              | 0.8                  | 15                          |
| Vantage Ultra Lights        | king size, filter                       | 6               | 0.5                  | 9                           |
| Vantage*                    | 100 mm, filter                          | 11              | 0.9                  | 15                          |
| Viceroy                     | king size, filter                       | 15              | 1.0                  | 17                          |
| Viceroy Rich Lights         | king size, filter                       | 8               | 0.7                  | 10                          |
| Viceroy                     | 100 mm, filter                          | 15              | 1.1                  | 18                          |
| Viceroy Rich Lights 100's   | 100 mm, filter                          | 8               | 0.7                  | 11                          |
| Virginia Slims              | 100 mm, filter                          | 15              | 1.0                  | 15                          |
| Virginia Slims              | 100 mm, filter, menthol                 | 14              | 1.0                  | 15                          |
| Virginia Slims Lights       | 100 mm, filter, (hard pack)             | 8               | 0.6                  | 9                           |
| Virginia Slims Lights*      | 100 mm, filter, menthol, (hard pack)    | 9               | 0.7                  | 10                          |
| Winston                     | king size, filter, (hard pack)          | 18              | 1.3                  | 17                          |
| Winston*                    | king size, filter                       | 19              | 1.4                  | 19                          |
| Winston Lights*             | king size, filter                       | 13              | 1.1                  | 14                          |
| Winston 100's*              | 100 mm, filter                          | 18              | 1.4                  | 19                          |
| Winston Lights 100's        | 100 mm, filter                          | 13              | 1.0                  | 15                          |
| Winston 100's               | 100 mm, filter, menthol                 | 17              | 1.3                  | 17                          |

\* These cigarette brands have been reformulated. See accompanying text.



Carol M. Thomas,  
Secretary.

[FR Doc. 81-23840 Filed 8-13-81; 8:45 am]

BILLING CODE 6750-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. 81F-01111]

#### Fabcon Inc.; Withdrawal of Petition for Food Additives

AGENCY: Food and Drug Administration.

ACTION: Notice.

**SUMMARY:** The Food and Drug Administration (FDA) announces the withdrawal without prejudice of the petition (FAP 1A2601) proposing the safe use of dioctyl sodium sulfosuccinate in the manufacture of sugar.

#### FOR FURTHER INFORMATION CONTACT:

Thomas C. Brown, Bureau of Foods (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

**SUPPLEMENTARY INFORMATION:** Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b), 72 Stat. 1786 (21 U.S.C. 348(b))), the following notice is issued:

In accordance with § 171.7

*Withdrawal of petition without prejudice* of the procedural food additive regulations (21 CFR 171.7), Fabcon, Inc., 314 Public Square Bldg., Cleveland, OH 44113, has withdrawn its petition (FAP 1A2601), notice of which was published in the *Federal Register* of December 16, 1970 (35 FR 19035) proposing that § 172.810 *Dioctyl sodium sulfosuccinate* (21 CFR 172.810) be amended to: (1) provide for the safe use of dioctyl sodium sulfosuccinate as a processing aid in the manufacture of sugar; and (2) delete the limitation of 25 parts per million of the additive in final molasses.

Dated: August 3, 1981.

Sanford A. Miller,  
Director, Bureau of Foods.

[FR Doc. 81-23894 Filed 8-13-81; 8:45 am]

BILLING CODE 4110-03-M

#### Cardiovascular and Renal Drugs Advisory Committee, et al.; Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

**SUMMARY:** This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also sets forth a summary of the procedures governing committee meetings and

methods by which interested persons may participate in open public hearings conducted by the committees and is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)), and FDA regulations (21 CFR Part 14) relating to advisory committees. The following advisory committee meetings are announced.

#### Cardiovascular and Renal Drugs Advisory Committee

*Date, time, and place.* August 31 and September 1, 9 a.m., Lister Hill Center, Bldg. 38A, Rm. BIN-30B, National Library of Medicine, National Institutes of Health, 8600 Rockville Pike, Bethesda, MD.

*Type of meeting and executive secretary.* Open public hearing, August 31, 9 a.m. to 10 a.m.; open committee discussion, August 31, 10 a.m. to 6 p.m., September 1, 9 a.m. to 5 p.m.; Joan Standaert, Bureau of Drugs (HFD-110), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443,4730.

*General function of the committee.* The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in cardiovascular and renal disorders.

*Agenda—Open public hearing.* Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee.

*Open committee discussion.* The committee will discuss Trental (pentoxifylline) (NDA 18-534, Hoechst-Roussel Pharmaceuticals Inc.) for use as a vasodilator for peripheral vascular disease; Isoptin tablets (verapamil hydrochloride) (NDA 18-593, Knoll Pharmaceutical Co.) to be used as therapy for angina pectoris; Cardiem tablets (diltiazem hydrochloride) (NDA 18-602, Marion Laboratories) for use in severe angina pectoris and coronary artery spasm; and Norpace (disopyramide) I.V. injection (NDA 18-492, Searle Pharmaceutical) to be used as an antiarrhythmic agent.

*Applications for reimbursement.* Must be received by August 24, 1981.

#### Endocrinologic and Metabolic Drugs Advisory Committee

*Date, time, and place.* September 10 and 11, 9 a.m., Conference Rms. G and H, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

*Type of meeting and executive secretary.* Open public hearing, September 10, 9 a.m. to 10 a.m.; open committee discussion, September 10, 10

a.m. to 5 p.m., September 11, 9 a.m. to 5 p.m.; A. T. Gregoire, Bureau of Drugs (HFD-130), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3542.

*General function of the committee.* The committee reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational prescription drug products for use in the treatment of endocrine and metabolic disorders.

*Agenda—Open public hearing.* Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to present information should contact the executive secretary.

*Open committee discussion.* On September 10, the committee will review and discuss the guidelines for the clinical evaluation of drugs used in the treatment of osteoporosis. On September 11, the committee will discuss (1) the FDA action report, (2) Winstrol (NDA 12-885) for treatment of osteoporosis, and (3) Calcimar (NDA 17-769) for the treatment of osteoporosis.

*Applications for reimbursement.* Must be received by August 28, 1981.

#### Dermatologic Drugs Advisory Committee

*Date, time, and place.* September 21, 9 a.m., Conference Rm. M, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

*Type of meeting and executive secretary.* Open public hearing, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 4:30 p.m.; David Bostwick, Bureau of Drugs (HFD-140), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-6798.

*General function of the committee.* The committee reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational prescription drug products for use in the treatment of dermatological disorders.

*Agenda—Open public hearing.* Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee.

*Open committee discussion.* The committee will discuss PUVA (psoralen and ultraviolet light) therapy in the treatment of psoriasis (NDA 9-048, Elder Pharmaceuticals).

*Applications for reimbursement.* Must be received by September 3, 1981.



**Arthritis Advisory Committee  
(Subcommittee on Disease Modifying  
Anti-Rheumatic Drugs)**

*Date, time, and place.* September 24, 9 a.m., Conference Rm. M, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

*Type of meeting and executive secretary.* Open committee discussion, 9 a.m. to 11 a.m.; open public hearing, 11 a.m. to 12 m.; open committee discussion, 1 p.m. to 5 p.m.; Robert Jerussi or Dotti Moore, Bureau of Drugs (HFD-150), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4250.

*General function of the committee.* The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for arthritis.

*Agenda—Open public hearing.* Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee.

*Open committee discussion.* The committee will discuss the long-term effects of disease modifying anti-rheumatic drugs, specifically gold.

*Applications for reimbursement.* Must be received by September 4, 1981.

**Obstetrics-Gynecology Device Section  
of the Obstetrics-Gynecology and  
Radiologic Devices Panel**

*Date, time, and place.* September 28, 9 a.m., Rm. 403A-425A, 200 Independence Ave. SW., Washington, DC.

*Type of meeting and panel section leader.* Open public hearing, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 5 p.m.; Lillian Yin, Bureau of Medical Devices (HFK-470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7555.

*General function of the committee.* The committee reviews and evaluates available data on the safety and effectiveness of devices currently in use and makes recommendations for their regulation.

*Agenda—Open public hearing.* Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the panel section leader before September 14, 1981, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

*Open committee discussion.* The committee will draft proposed

guidelines for premarket approval of the class III transabdominal amnioscope (fetoscope); make a classification recommendation for a pre-enactment device, the fertility prediction calendar (not for contraceptive use); and make a recommendation on a petition for reclassification from class III to class II for spermicidally lubricated latex prophylactics. FDA will also inform the committee of recent scientific developments of the tampon/toxic shock syndrome issue.

*Applications for reimbursement.* Must be received by September 8, 1981.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairman determines will facilitate the committee's work.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this Federal Register notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairman's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be requested from the Dockets

Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday. The FDA regulations relating to public advisory committees may be found in 21 CFR Part 14.

Applications for reimbursement for participation in the meetings listed above should be sent to the Office of Consumer Affairs (HFE-1), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, rather than to the Dockets Management Branch as prescribed in § 10.210 of the regulations (21 CFR 10.210). If you wish to submit an application or wish more information regarding the reimbursement program, please call 301-443-5006.

FDA has established expedited procedures for review of any application for reimbursement for participation in the meetings announced in this notice. The Office of Consumer Affairs, FDA, will file any application for reimbursement for participation in the meetings announced in this notice in the docket for this notice.

Dated: August 7, 1981.

William F. Randolph,

Acting Associate Commissioner for  
Regulatory Affairs.

[FR Doc. 81-23489 Filed 8-13-81; 8:45 am]  
BILLING CODE 4110-03-M

[Docket No. 79N-0001; DESI 6403]

**Tolazoline Hydrochloride Oral Dosage  
Forms; Withdrawal of Approval**

**AGENCY:** Food and Drug Administration (FDA).

**ACTION:** Notice.

**SUMMARY:** This notice withdraws approval of part of a new drug application providing for Priscoline Hydrochloride Tablets (part of NDA 6-403) and a new drug application for Priscoline Hydrochloride Lontabs, sustained-release tablets (NDA 11-770), each containing tolazoline hydrochloride. The basis of the withdrawal is that the products lack substantial evidence of effectiveness for their labeled indications. The products have been used for symptoms associated with peripheral vascular disease.

**EFFECTIVE DATE:** August 24, 1981.

**ADDRESS:** Requests for an opinion of the applicability of this notice to a specific product should be identified with the reference number DESI 6403 and directed to the Division of Drug Labeling Compliance (HFD-310), Bureau of Drugs,



Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:**

Douglas I. Ellsworth, Bureau of Drugs (HFD-32), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3650.

**SUPPLEMENTARY INFORMATION:** In a notice of opportunity for hearing published in the Federal Register of May 25, 1979 (44 FR 30443), the Director of the Bureau of Drugs proposed to issue an order withdrawing approval of the new drug applications for certain peripheral vasodilators, including tolazoline hydrochloride. In response to the notice, Ciba-Geigy Corporation, 566 Morris Ave., Summit, NJ 07901, requested a hearing concerning its new drug applications for the following products:

1. NDA 6-403: Priscoline Hydrochloride Tablets and Injection containing tolazoline hydrochloride.

2. NDA 11-770: Priscoline Hydrochloride Lontabs, sustained-release tablets, containing tolazoline hydrochloride.

Ciba-Geigy later withdrew its request for a hearing. Subsequently, data were submitted concerning Priscoline Hydrochloride Injection. These data are currently under review. Accordingly, approval of those parts of NDA 6-403 and NDA 11-770 that provide for oral dosage forms of Priscoline Hydrochloride is now being withdrawn. The notice that follows does not apply to Priscoline Hydrochloride Injection. The injectable dosage form will be the subject of a future Federal Register notice.

Any drug product that is identical, related, or similar to the drug products named above and is not the subject of an approved new drug application is covered by the new drug applications reviewed and is subject to this notice (21 CFR 310.6). Any person who wishes to determine whether a specific product is covered by this notice should write to the Division of Drug Labeling Compliance at the address given above.

The Director of the Bureau of Drugs, under the Federal Food, Drug, and Cosmetic Act (sec. 505, 52 Stat. 1052-1053 as amended (21 U.S.C. 355)), and under the authority delegated to him (21 CFR 5.82), finds that, on the basis of new information before him with respect to the drug products, evaluated together with the evidence available to him when the applications were approved, there is a lack of substantial evidence that the drug products used orally will have the effects they purport or are represented to have under the conditions of use prescribed, recommended, or suggested in the labeling.

Therefore, pursuant to the foregoing findings, approval of those parts of NDA 6-403 that provide for Priscoline Hydrochloride Tablets and of NDA 11-770, and all of their amendments and supplements, is withdrawn effective August 24, 1981. This notice does not apply to those parts of NDA 6-403 that provide for Priscoline Hydrochloride Injection.

Shipment in interstate commerce of the products for which approval is withdrawn or of any identical, related, or similar product that is not the subject of an approved new drug application will then be unlawful.

Dated: August 7, 1981

Jerome A. Halperin,

Acting Director, Bureau of Drugs.

[FR Doc. 81-23486 Filed 8-13-81; 8:45 am]

BILLING CODE 4110-03-M

[Docket No. 81N-0097]

**GRAS Review of Cornmint Oil and Psyllium Seed Husk Gum; Public Hearing**

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a public hearing will be held on September 14, 1981, on cornmint oil and psyllium seed husk gum, so that data, information, and views can be presented orally to determine whether these substances are generally recognized as safe (GRAS) or subject to a prior sanction.

**DATE:** September 14, 1981.

**ADDRESS:** The hearing will be held in the Barn Meeting Room, Federation of American Societies for Experimental Biology, 9650 Rockville Pike, Bethesda, MD 20014.

**FOR FURTHER INFORMATION CONTACT:**

Corbin L. Miles, Bureau of Foods (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, D.C. 20204, 202-472-4750; or

F. R. Senti, Life Sciences Research Office, Federation of American Societies for Experimental Biology, 9650 Rockville Pike, Bethesda, MD 20014, 301-530-7033.

**SUPPLEMENTARY INFORMATION:** In the Federal Register of April 21, 1981 (46 FR 22810), FDA issued a notice advising the public that an opportunity would be provided for oral presentation of data, information, and views at public hearings to be conducted by the Select Committee on GRAS Substances of the Life Sciences Research Office, Federation of American Societies for

Experimental Biology (hereinafter referred to as the Select Committee), concerning the safety of the following 11 categories of food ingredients and the Select Committee's tentative determination of whether they are GRAS or subject to prior sanction:

Corn gluten  
Cornmint oil  
Glucono delta-lactone  
Oat gum  
Okra gum  
Peptones  
Psyllium seed husk gum  
Quince seed gum  
Sodium  
aminotris(methylenephosphonate)  
Wheat gluten  
Zein

No requests were received for a hearing on corn gluten, glucono delta-lactone, oat gum, okra gum, peptones, quince seed gum, sodium aminotris(methylenephosphonate), or wheat gluten.

The Select Committee received a request from Colorcon, Inc., Moyer Blvd., West Point, PA 19486, for a hearing on zein, but Colorcon subsequently withdrew its request.

The Select Committee received requests from the following companies and associations asking for an opportunity to appear at a public hearing and to make an oral presentation on cornmint oil or psyllium seed husk gum:

Flavor and Extract Manufacturers' Association of the United States, 900 17th St. NW., Washington, D.C. 20006, Searle Research and Development Division, G. D. Searle & Co., Box 5110, Chicago, IL 60680.

No other requests for a hearing on these two food categories were received.

In accordance with the procedures published in the April 21, 1981 notice, the agency hereby announces that a hearing on cornmint oil and psyllium seed husk gum will be held beginning at 9 a.m. on September 14, 1981, in the Barn Meeting Room, Federation of American Societies for Experimental Biology, 9650 Rockville Pike, Bethesda, MD 20014. Those persons who have requested an opportunity to make oral presentations will be expected to complete their presentation within the time period indicated and in accordance with the following schedule:

**September 14, 1981**

**9 to 10 a.m., Cornmint Oil**

Richard A. Ford, Ph. D., Consultant, Flavor and Extract Manufacturers' Association, Washington, D.C., and Otho Easterday, Ph. D., (member of



FEMA Safety Evaluation Coordination Committee), Flavor and Extract Manufacturers' Association, Washington, D.C., 30 minutes.

**10 to 11 a.m., Psyllium Seed Husk Gum**

James Young, Ph. D., Searle Research and Development Division, G. D. Searle & Co., Chicago, IL, 30 minutes.

Dated: August 10, 1981.

William F. Randolph,  
Acting Associate Commissioner for  
Regulatory Affairs.

[FR Doc. 81-23626 Filed 8-13-81; 8:45 am]

BILLING CODE 4110-03-M

[Docket No. 81M-0235]

**Instrumental Industries, Inc.;  
Premarket Approval of JEM No. 400  
Endotracheal Tube Changer**

**AGENCY:** Food and Drug Administration.  
**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) announces its approval of the application for premarket approval under the Medical Device Amendments of 1976 of the JEM No. 400 Endotracheal Tube Changer sponsored by Instrumentation Industries, Inc., Pittsburgh, PA. After reviewing the recommendation of the Anesthesiology Device Section of the Respiratory and Nervous System Devices Panel, FDA notified the sponsor that the application was approved because the device had been shown to be safe and effective for use as recommended in the submitted labeling.

**DATE:** Petitions for administrative review by September 14, 1981.

**ADDRESS:** Requests for copies of the summary of safety and effectiveness data and petitions for administrative review may be sent to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Henry Goldstein, Bureau of Medical Devices (HFK-402), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7445.

**SUPPLEMENTARY INFORMATION:** On November 21, 1980, Instrumentation Industries, Inc., Pittsburgh, PA, submitted to FDA an application for premarket approval of the JEM No. 400 Endotracheal Tube Changer. The application was reviewed by the Anesthesiology Device Section of the Respiratory and Nervous System Devices Panel, an FDA advisory committee, which recommended approval of the application. On July 21,

1981, FDA approved the application by a letter to the sponsor from the Acting Director of the Bureau of Medical Devices.

A summary of the safety and effectiveness data on which FDA's approval is based is on file in the Dockets Management Branch (address above) and is available upon request from that office. A copy of all approved final labeling is available for public inspection at the Bureau of Medical Devices. Contact Henry Goldstein (HFK-402), address above. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

**Opportunity for Administrative Review**

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition under section 515(g) of the act (21 U.S.C. 360e(g)) for administrative review of FDA's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and of FDA's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration of FDA action under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide to grant or deny the petition and will publish a notice of its decision in the *Federal Register*. If FDA grants the petition, the notice will state the issue to be reviewed, the form of the review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before September 14, 1981, file with the dockets Management Branch (address above), four copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 7, 1981.

William F. Randolph,  
Acting Associate Commissioner for  
Regulatory Affairs.

[FR Doc. 81-23624 Filed 8-13-81; 8:45 am]

BILLING CODE 4110-03-M

**Office of the Secretary**

**Social Security Administration;  
Statement of Organization, Functions,  
and Delegations of Authority**

Part A, Office of the Secretary, Chapter AR Office of Refugee Resettlement (most recently amended at 45 FR 39542, June 11, 1980) and Part S, Social Security Administration (most recently amended at 45 FR 39542, June 11, 1980) are amended to reflect the transfer of the Office of Refugee Resettlement. In addition, the amendment reflects the transfer to the Office of Refugee Resettlement of the functions assigned to the Cuban/Haitian Task Force. Two new divisions are established to assume responsibility for these functions.

1. Part A, Office of the Secretary, Chapter AR, Office of Refugee Resettlement is deleted in its entirety.

2. Part S, Chapter S, Social Security Administration, Section S.10 is amended by adding subsection N, The Office of Refugee Resettlement (SK).

3. Part S, Social Security Administration is amended by adding a new Chapter SK to read as follows:

**SK.00 Mission**

Under the supervision of the Commissioner, the Office of Refugee Resettlement (ORR) plans, develops, and directs implementation of a comprehensive program for domestic refugee and entrant resettlement assistance. The Office provides direction and technical guidance to the nationwide administration of programs funded from the ORR refugee and entrant resettlement appropriations. It develops, recommends, and issues program policies, procedures, and interpretations to provide program direction. The Office monitors and evaluates the performance of States and other public and private agencies in administering these programs and supports actions to improve them. It provides national leadership in the development and coordination of national, public, and private programs giving refugee and entrant assistance. The Office administers and supervises from a programmatic perspective the administration of HHS grant programs providing assistance or services to refugees and entrants.



### Section SK.10 Organization

The Office of Refugee Resettlement, under the supervision of the Director, consists of:

Immediate Office of the Director of Refugee Resettlement  
Office of Public Affairs  
Division of Financial Management and Administration  
Division of Operations  
Division of Policy and Analysis  
Division of Resettlement  
Division of Special Operations  
Regional Offices of Refugee Resettlement

### Section SK.20 Function

1. *The Immediate Office of the Director of Refugee Resettlement* is the functional manager for refugee and entrant affairs and is responsible for planning, developing and directing implementation of a comprehensive program for domestic refugee and entrant resettlement assistance. It provides the Director and Deputy Director with staff assistance on the full range of their responsibilities.

a. *The Director of the Office of Refugee Resettlement* is directly responsible to the Commissioner for carrying out HHS's refugee and entrant programs. These responsibilities include coordination with the lead refugee and entrant program offices of other Departments; providing leadership in representing HHS's refugee and entrant policy, program and administration to a variety of governmental and non-governmental parties; acting as the coordinator of the total HHS refugee and entrant resettlement effort whether or not funded by Refugee Act funds.

The Director provides general supervision of the major components of ORR, including the regional offices, approves ORR strategies for funding priorities and meeting the service needs of refugees and entrants, approves special project grants that provide assistance or services to refugees or providers of refugee and entrant services, and is responsible for the efficient and effective utilization of the resources of the office.

b. *The Deputy Director of Refugee Resettlement* assists the Director of Refugee Resettlement in carrying out his/her ORR-wide responsibilities and performs other duties as the Director of ORR may prescribe.

2. *The Office of Public Affairs* provides public affairs counseling, guidance, and services to the Director. Advises the Director on the development of policies, plans, and strategies for the dissemination of information about the refugee and entrant programs, and the development

of adequate and accurate responses to media and public inquiries.

The Office is responsible for helping in the development of information programs designed to meet the needs of other organization participants in the national refugee and entrant assistance and resettlement programs, such as voluntary resettlement agencies, refugee mutual assistance associations, State governments and public and private/non-profit service providers. The Office researches and writes a variety of materials required to communicate ORR programs and policies adequately, including news releases, fact sheets, media statements, speeches and reports. Such materials may be utilized by the Secretary, the Under Secretary and the Commissioner. The Office assists the Director in preparing for and conducting media interviews, in responding to media inquiries, and arranging for, or instigating such interviews in connection with visits by the Director to various sections of the country.

3. *The Division of financial management and Administration* formulates estimates for refugee and entrant program and administrative budgets. It supervises the preparation of budget briefing materials for budget presentation. The Division performs budget execution responsibilities which include: reviewing the budget approved by the Congress, recommending a financial plan for its execution, making funds and personnel allocations to ORR headquarters and regional offices, within guidelines of the approved financial plan; maintaining budgetary controls to ensure observance of established ceiling on both funds and personnel and monitors compliance therewith; preparing requests for apportionment of appropriated funds.

Division is responsible for control of funds for grants to States and other participating organizations and control of the federal refugee and entrant program administrative budgets. It provides advice and assistance on financial management to the regional offices and State agencies and coordinates a program of financial review of refugee program expenditures. The Division provides administrative support and services to the ORR headquarters.

The Division provides centralized management and administration of discretionary grants for ORR headquarters awards. It assures that all awarded discretionary grants conform with applicable statutes, regulations, and policies in financial and administrative areas.

4. *Division of Operations* provides direction for the operation of the ORR

resettlement programs. The Division recommends to the Director priorities among various types of refugee and entrant services. It directs the implementation of innovative programmatic approaches to resettlement service delivery, identifies successful and effective programs and projects, and develops procedures for sharing such information with all refugee and entrant service providers. It coordinates national demonstration programs to support State and local services to refugees.

The Division devises strategies for providing technical assistance to State and local agencies, refugee/entrant self-help groups, and voluntary agencies; guides the development of and approves technical assistance plans; and supervises the execution of contracts for the provision of technical assistance. It oversees the operations of regional offices and provides programmatic advice to State agencies, local governments, voluntary agencies and refugee/entrant self-help groups on program guidelines and procedures.

The Division oversees the provision of information services, and orientation programs and insures a comprehensive program of publications in various languages for this purpose. It directs a national government information service on refugee resettlement, establishes a locator service to match resettled refugees with arriving relatives and administers a program that places unaccompanied children in foster care, and monitors their progress.

The Division plans and guides an ongoing monitoring program operated through ORR's regional structure; trains regional staff to carry out their monitoring responsibilities. It reviews regional recommendations regarding the approval/disapproval of State plans; reviews regional monitoring reports on grantee performance identifying program deficiencies, and provides guidance on corrective actions to the region.

The Division also oversees the operations of the Miami office of the Office of Refugee Resettlement which has responsibility for the reception and resettlement of all arrivals, deemed to be refugees or entrants, using Miami as a port of entry. The Miami office of ORR maintains liaison with voluntary agencies responsible for resettling refugees and entrants as well as with public and private agencies whose services and activities affect refugee and entrant welfare.

5. *The Division of Policy and Analysis* directs the development and interpretation of policy and regulations



for the refugee and entrant programs. It develops priorities among various types of refugee and entrant assistance on services taking into consideration funding availability, predicted effectiveness of options and emergent needs of new refugees. In accomplishing these tasks, it derives and implement means for assuring adequate involvement, comment and review from a variety of interested and knowledgeable parties.

The Division develops goals, criteria and standards for the refugee and entrant programs and, in order to determine the degree of accomplishment, develops an evaluation criteria, and designs evaluations overseeing the technical aspects of implementation. Based on reviews, analyses, assessments and evaluations, it makes recommendations on changes in program policy, operation and administration.

The Division collects data and performs analyses on the changing needs of the refugee and entrant population providing direction in the design of needs assessments conducted by itself or other entities. The Division provides leadership to identify data needs and sources, formulates data and reporting requirements, and assists regional offices, States and private agencies on data reporting and the resolution of reporting problems. The Division has responsibility for assuring that legislative requirements are defined and met. It seeks legal interpretation where such requirements or intent may be unclear. Further, it makes recommendations concerning aspects of legislation that require amendment. The Division prepares reports required by statute, Congressional requests, and Department needs, and prepares legislative, regulatory, operational and policy recommendations based on program analysis.

6. *Division of Resettlement* oversees the implementation of policy for resettlement of Cuban entrants from Fort Chaffee and other INS detention centers into society. It recommends to the Director strategies for resettlement which will be carried out by the national voluntary agencies and other appropriate groups. The division is also responsible for the programmatic review and monitoring of grants for resettlement services. In cooperation with the Public Health Service, Refugee Health Affairs, and Fort Chaffee Camp operations, it coordinates case allocations to resettlement agencies of Cuban entrants.

The Division services all levels of government, interested groups, and individuals as a clearinghouse and

center for information pertaining to Cuban entrants.

The Division designs and directs, in coordination with other participating groups, an assessment program which includes determining the special needs of individual Cuban entrants.

7. *Division of Special Operations* carries out the Department's responsibilities with respect to holding and processing facilities for Cuban and Haitian entrants, including the Fort Chaffee Resettlement Center, Fort Allen Resettlement Center and the Atlanta Federal Corrections Institution. Duties and responsibilities of the unit include, but are not limited to: inter- and intra-departmental liaison with DOD, DOJ, GSA, and State and other Federal agencies; coordination of non-governmental agencies such as ICEM; daily management of Fort Chaffee Resettlement Center (exclusive of Resettlement activities), coordination with DOD on the caretaker status and potential activities of Fort Allen; and coordination of activities with BOP at Atlanta FCI. The unit is responsible for responding to crisis situations, such as civil disturbances at the resettlement centers and coordinating the Washington response to the crisis.

8. The Regional Offices of Refugee Resettlement provides supervision and technical direction for the refugee program in the region; establishes regional program priorities; supplies oversight and guidance to regional refugee program staff. Participates in meetings with public and private agencies involved with resettlement to explain and seek support for refugee resettlement activities. Acts as primary contact with State and local governments, voluntary resettlement agencies and refugee self-help groups in the region. Periodically conducts service delivery assessments of the regional refugee program. Advises States on what HHS-type services refugees require; and recommends to headquarters that these services be made available. Provides guidance about national refugee policy for the use of State, local and community service providers; assures that adequate services are available to meet the needs of the refugee communities and recommends to headquarters alternative approaches to providing services.

Assists States in the development of State plans to ensure that they adequately reflect the needs of local refugees; provides technical assistance to State social services agencies concerning refugee needs and other program requirements; provides guidance to State agencies in the development of purchase of services

contracts, to ensure that the services meet the needs of refugees in a particular community; and monitors the services being provided to ensure they are being provided in accordance with the terms of the contract. Evaluates the relative cost-effectiveness of the services to be provided under grant/contract applications, and recommends approval or disapproval; conducts periodic reviews of local project operations to ensure refugees are receiving quality services; and coordinates State and local refugee projects with other Federal services to avoid duplication of efforts. Performs financial reviews of regional refugee expenditures to provide management with information on the efficient and effective use of funds and to ensure proper accounting; and reviews State social services expenditures to assure funds are being properly used. Provides interpreter services for regional staff and, as possible and needed, on behalf of various providers of services in the region, and works closely with HHS regional staff on such matters as cost allocation, service delivery assessment, public affairs, and intergovernmental affairs.

4. Amend Chapter AD(1-X), Office of the Principal Regional Official; Section AD. 10-Organization, by eliminating: Regional Office of Refugee Resettlement (AD(1-X)M).

5. Amend Chapter AD(1-X), Office of the Principal Regional Official; Section AD. 20-Functions, by eliminating subsection F in its entirety.

Dated: August 5, 1981.

Richard S. Schweiker,  
Secretary.

[FR Doc. 81-23615 Filed 6-13-81; 8:45 am]  
BILLING CODE 4110-12-M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[Serial No. A-17002]

#### Arizona; Application

Notice is hereby given that pursuant to Section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), Southwest Gas Corporation, P.O. Box 15015, Las Vegas, Nevada 89114, filed an application for a right-of-way to construct a 16" O.D. pipeline for the purposes of transporting natural gas from El Paso Natural Gas Company's pipeline system just south of Kingman, Arizona to the Red Lake area, approximately 30 miles north of Kingman. The proposed pipeline will cross approximately 9 miles of public



lands beginning in Section 29, T. 26 N., R. 16 W. and extending to Section 13, T. 21 N., R. 16 W., GSR Mer., Arizona.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and, if so, under what terms and conditions.

Interested persons desiring to express their views on this matter should do so promptly. Persons submitting comments should include their name and address, and send them to the State Director, Arizona State Office, Bureau of Land Management, 2400 Valley Bank Center, Phoenix, Arizona 85073, and to the District Manager, Phoenix District, Bureau of Land Management, 2929 West Clarendon, Phoenix, Arizona 85017.

Dated: August 5, 1981.

**Mario L. Lopez,**  
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 81-23604 Filed 8-13-81; 8:46 am]

BILLING CODE 4310-84-M

#### **Butte District; Exchange of Public Lands in Missoula County and Private Lands in Powell County, Montana; Correction**

In Federal Register Document 81-18768 appearing on page 32944, June 25, 1981, the total acreage of the private land to be acquired is corrected to read 4,810.50 acres.

Dated: August 6, 1981.

**Jack A. McIntosh,**  
Butte District Manager.

[FR Doc. 81-23600 Filed 8-13-81; 8:45 am]

BILLING CODE 4310-84-M

#### **Butte District; Exchange of Public Lands in Beaverhead County, Montana; Correction**

In Federal Register Document 81-20136 appearing on page 35557, July 9, 1981, the legal description is corrected to read:

Section 1, E $\frac{1}{2}$  SW $\frac{1}{4}$  W $\frac{1}{2}$  SE $\frac{1}{4}$ —160 acres.

Dated: August 6, 1981.

**Jack A. McIntosh,**  
Butte District Manager.

[FR Doc. 81-23601 Filed 8-13-81; 8:45 am]

BILLING CODE 4310-84-M

#### **Butte District; Public Lands in Lewis and Clark County, Montana—Notice of Realty Action—Non-Competitive Sales**

The following described lands have been examined and identified as suitable for disposal by sale under Section 203 of the Federal Land Policy

and Management Act of 1976 (90 Stat. 2750; 43 U.S.C. 1713):

#### **Principal Meridian Montana**

T. 10 N., R. 4W.,

Sec. 34.

Lot 15 containing 0.051 acres;  
Lot 16 containing 0.072 acres;  
Lot 18 containing 0.118 acres;  
Lot 19 containing 0.192 acres;  
Lot 20 containing 0.214 acres;  
Lot 21 containing 0.207 acres;  
Lot 22 containing 0.087 acres.

The above described lands are being offered in separate parcels as direct, non-competitive sales to David E. Walker, Robert R. Bauch, John A. Giacom, Truce Emmett, and Charles Streeter and Willis J. Mavis, owners of adjoining tracts and of improvements on the sale tracts. The sales will be made at the appraised fair market value and will not be held until 60 days after the issuance of this notice.

The sales will resolve a series of inadvertent occupancy trespasses which resulted from an erroneous private survey. These parcels are not suitable for management, or needed by another Federal department or agency. The sale is consistent with Bureau of Land Management planning for the land involved and does not conflict with state or local land use plans. The public interest will best be served by the sale of these parcels to protect the private landowners' equity.

The terms and conditions applicable to this sale are:

1. The patent will include a reservation of a right-of-way for ditches and canals constructed by authority of the United States in accordance with 43 U.S.C. 945.
2. All minerals will be reserved to the United States.
3. The patent will be subject to all other existing rights.

Detailed information concerning this action, including the land report and environmental assessment, is available for review at the Butte District Office, 106 North Parkmont, P.O. Box 3388, Butte, Montana 59702.

On or before September 18, 1981, interested parties may submit comments to the State Director (943), Bureau of Land Management, P.O. Box, 30157, Billings, Montana 59107. Any adverse comments will be evaluated by the State Director who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become the final determination of the Department of the Interior.

Dated: August 6, 1981.

**Jack A. McIntosh,**  
Butte District Manager.

[FR Doc. 81-23602 Filed 8-13-81; 8:45 am]

BILLING CODE 4310-84-M

#### **Oklahoma; Coal Production**

August 6, 1981.

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice cancelling the Oklahoma Subregion of the Western Interior Coal Production Region and opening the six county area to lease on application.

**SUMMARY:** On November 9, 1979, the Bureau of Land Management (BLM) established the Western Interior Coal Production Region-Oklahoma Subregion for the management of federally owned coal (44 FR 65196-65197). Subsequent implementation of land use planning, tract delineation, and preliminary environmental assessments indicate volumes of coal, interest, and scope of environmental impacts do not justify federally initiated coal lease sale program procedures of 43 CFR 3420.4 through 3420.7. In accordance with 43 CFR 3420.3-1(a)(2), this notice cancels the Oklahoma Subregion of the Western Interior Coal Production Region. Further, this notice designates federal coal reserves in Oklahoma as open to lease on application in accordance with 43 CFR 3425.

**FOR FURTHER INFORMATION CONTACT:** Robert Brown, (405) 231-4481, Oklahoma Resource Area Office, Bureau of Land Management, Room 548, 200 NW Fifth, Oklahoma City, Oklahoma 73102.

**SUPPLEMENTARY INFORMATION:** The Oklahoma Subregion of the Western Interior Coal Production Region was established by the Bureau of Land Management (BLM) on November 9, 1979 together with a number of other Regions to implement competitive coal leasing under regulations contained in 43 CFR 3420. The Oklahoma Subregion includes the following Oklahoma Counties: Atoka, Coal, Haskell, Latimer, LeFlore, and Pittsburg. The six county production subregion was estimated to contain sufficient federal coal deposits to justify offering coal leases through the competitive leasing process set out in 43 CFR 3420.4 through 3420.7.

During the initial phases of activity planning, the Regional Coal Team determined that as a result of limited expressions of interest in additional tracts of federal coal in southeast Oklahoma, a depressed coal industry, small volumes of potentially leasable coal, and the local nature of expected



economic and social impacts from the federal leasing program that coal in southeast Oklahoma should be handled on a lease on application basis under 43 CFR 3425.

This proposal was discussed at the May 19, 1981 Western Interior Regional Coal Team meeting and no adverse comments were received from the public.

The Governor of the State of Oklahoma concurred in the recommendation and the Assistant Secretary of the Department of Interior for Land and Water Resources approved the modification.

The expected benefits are a substantial savings in administrative costs to both the Federal government and the State of Oklahoma together with a more responsive leasing process for the coal industry. No additional social, economic or environmental impacts are anticipated as a result of this change in the method of leasing.

In accordance with 43 CFR 3420.3-1(a)(2) this notice is to advise the public that the Oklahoma Subregion of the Western Interior Coal Production Region is cancelled, thereby declaring that the federal coal reserves of southeast Oklahoma will be leased under 43 CFR 3425 (lease on application) rather than under 43 CFR 3420.4 through 3420.7.

Any applications for federal coal leasing being processed prior to this notice shall continue to be processed according to the procedures in effect at the time of application.

Applications under 43 CFR 3425.1 shall be accepted by the BLM to lease federal coal in the following southeast Oklahoma Counties: Atoka, Coal, Haskell, Latimer, LeFlore, and Pittsburg.

Three copies of the application shall be filed in the New Mexico State Office of the BLM, P.O. Box 1449, Santa Fe, New Mexico 87501.

Supportive information on federal coal reserve areas is available for public inspection at the BLM Oklahoma Resource Area Office in Oklahoma City at the address provided above.

Charles W. Luscher,  
State Director.

[FR Doc. 81-23603 Filed 8-13-81; 8:45 am]  
BILLING CODE 4310-84-M

#### Boise, Idaho, District Grazing Advisory Board; Meeting

In accordance with the Federal Advisory Committee Act, and the Federal Land Policy and Management Act, notice is given that the Boise, Idaho, District Grazing Advisory Board will meet on September 9 and 10, 1981.

The meeting will begin on September 9 at 9:00 a.m. in the Boise District Conference Room at 3948 Development Avenue, in Boise. On September 10, the Board will tour the Saylor Creek Unit.

The agenda for the meeting will include:

- Use of Range Betterment Funds
- Use of Fire for Range Improvement
- Project Maintenance
- Allocation of Excess Forage in Allotment Management Plans

The meeting is open to the public. Interested persons may make oral statements to the Board between 1:00 and 3:00 p.m. on September 9, 1981, or file written statements for the Board's consideration. Anyone wishing to make an oral statement must notify the District Manager, BLM, 3948 Development Avenue, Boise, Idaho 83705 by September 4, 1981. Anyone wishing to participate in the tour on September 10 must provide their own transportation and food.

Minutes of the Board meeting will be maintained in the District Office and will be available for the public inspection within 30 days following the meeting.

Martin J. Zimmer,  
District Manager.

[FR Doc. 81-23590 Filed 8-13-81; 8:45 am]  
BILLING CODE 4310-84-M

#### Susanville, California, District Advisory Council; Meeting

Notice is hereby given in accordance with Pub. L. 94-579 (FLPMA) that a meeting of the Susanville District Advisory Council will be held on September 15 and 16, 1981.

The meeting will begin at 10:00 a.m. on September 15, in the Conference Room of the U.S. Forest Service Engineering Building, 1800 Main Street, Susanville, California.

The agenda for the meeting will include:

1. Cal/Neva ES Final
2. Ad Hoc Committee Report on Reporting ES Implementation Progress to the Public
3. Susanville District Predator Control Plan
4. Ad Hoc Committee Report on Recommendation of Native American Representative
5. Cowhead/Massacre ES Update
6. Rangeland Monitoring Policy
7. Alturas RMP Update
8. Painter Flat DLE Report
9. Willow Creek ES Issues and Alternatives
10. Oil & Gas Leasing on District
11. Budget Allocations—State Wide—Impact on District
12. Report on Grazing Advisory Board Meeting & C-2N Actions Regarding Improvement Projects
13. Progress Report on RCD Project on Range Improvements

#### 14. Report on Sierra Club Retreat

The meeting is open to the public and time will be provided for public comment.

Summary minutes of the council meeting will be maintained in the District Office and will be available for public inspection and reproduction within 30 days following the meeting.

Ben F. Collins,  
Acting District Manager.

[FR Doc. 81-23605 Filed 8-13-81; 8:45 am]  
BILLING CODE 4310-84-M

#### INTERSTATE COMMERCE COMMISSION

[Volume No. OP3-241]

#### Motor Carriers; Permanent Authority; Republications of Grants of Operating Rights Authority Prior to Certification

The following grants of operating rights authorities are republished by order of the Commission to indicate a broadened grant of authority over that previously noticed in the Federal Register.

An original and one copy of opposing verified statements must be filed with the Commission within 45 days after the date of this Federal Register notice. Applicant may file a verified statement in rebuttal within 60 days. Such pleadings shall comply with 49 CFR 1100.247 (renumbered 1100.251) addressing specifically the issue(s) indicated as the purpose for republication. Special Rule 247 (renumbered 251) was published in the Federal Register of July 3, 1980, at 45 FR 45539.

MC 116915 (Sub-126) (Republication) filed November 18, 1980, published in the Federal Register issue of December 16, 1980. Applicant: ECK MILLER TRANSPORTATION CORP., Rt. 1, Box 248, Rockport, IN 47635. Representative: Fred F. Bradley, P.O. Box 773, Frankfort, KY 40602. A Decision of the Commission, Review Board Number 2, decided March 25, 1981, and served April 6, 1981, finds that the performance by applicant of the service described will serve a useful public purpose, responsive to a public demand or need to operate as a common carrier, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting, (1) heating, cooling, and dust collecting apparatus, blower systems, furnace coils, and dust arresters, (2) machinery and parts for machinery (except commodities in (1) above), (3) iron and steel articles (except commodities in (1) and (2))



above), and (4) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1), (2), and (3) above (except commodities in bulk), between points in Jefferson and Perry Counties, AL, Madison County, IL, Cuyahoga County, OH, and Wayne County, MI, on the one hand, and, on the other, points in the United States; that the applicant is fit, willing, and able properly to perform the granted service and to conform to statutory and administrative requirements. The purpose of this republication is to reflect additional service to points in Perry County, AL.

By the Commission,  
Agatha L. Mergenovich,  
Secretary.

[FR Doc. 81-23667 Filed 8-13-81; 8:45 am]  
BILLING CODE 7035-01-M

[Docket No. AB-6 (Sub-100F)]

**Burlington Northern Railroad Company—Abandonment—Between Glasgow and Glasgow Air Base Line, MT; Findings**

Notice is hereby given pursuant to 49 U.S.C. 10903 that the Commission, Review Board Number 3, has issued a certificate authorizing the Burlington Northern Railroad Company to abandon its line of railroad known as: the Glasgow to Glasgow Air Base Line extending from railroad milepost 0.00 near Glasgow, MT, to railroad milepost 18.39, at the end of the line, near Glasgow Air Base, MT, a distance of 18.39 miles in Valley County, MT, subject to certain conditions. Since no investigation was instituted, the requirement of § 1121.38(b) of the Regulations that publication of notice of abandonment decisions in the *Federal Register* be made only after such a decision becomes administratively final was waived.

Upon receipt by the carrier of an actual offer of financial assistance, the carrier shall make available to the offeror the records, accounts, appraisals, working papers, and other documents used in preparing Exhibit I (Section 1121.45 of the Regulations). Such documents shall be made available during regular business hours at a time and place mutually agreeable to the parties.

The offer must be filed with the Commission and served concurrently on the applicant, with copies to Ms. Ellen Hanson, Room 5417, Interstate Commerce Commission, Washington, DC 20423, no later than 10 days from publication of this Notice. The offer, as filed, shall contain information required

pursuant to Section 1121.38(b)(2) and (3) of the Regulations. If no such offer is received, the certificate of public convenience and necessity authorizing abandonment shall become effective 30 days from the service date of the certificate.

Agatha L. Mergenovich,  
Secretary.

[FR Doc. 81-23634 Filed 8-13-81; 8:45 am]  
BILLING CODE 7035-01-M

[Docket No. AB-18 (Sub-43F)]

**Chesapeake and Ohio Railway Co.—Abandonment—Near Waynesboro, in Augusta County, Va.; Findings**

Notice is hereby given pursuant to 49 U.S.C. 10903 that the Commission, Review Board Number 3, has issued a certificate authorizing the Chesapeake and Ohio Railway Company to abandon its line of railroad known as: South Belt Line between Valuation Stations 2+00 and 38+60, a total distance of 0.69 mile, at or near Waynesboro, in Augusta County, VA, subject to certain conditions. Since no investigation was instituted, the requirement of § 1121.38(b) of the Regulations that publication of notice of abandonment decisions in the *Federal Register* be made only after such a decision becomes administratively final was waived.

Upon receipt by the carrier of an actual offer of financial assistance, the carrier shall make available to the offeror the records, accounts, appraisals, working papers, and other documents used in preparing Exhibit I (Section 1121.45 of the Regulations). Such documents shall be made available during regular business hours at a time and place mutually agreeable to the parties.

The offer must be filed with the Commission and served concurrently on the applicant, with copies to Ms. Ellen Hanson, Room 5417, Interstate Commerce Commission, Washington, DC 20423, no later than 10 days from publication of this Notice. The offer, as filed, shall contain information required pursuant to § 1121.38(b) (2) and (3) of the Regulations. If no such offer is received, the certificate of public convenience and necessity authorizing abandonment shall become effective 30 days from the service date of the certificate.

Agatha L. Mergenovich,  
Secretary.

[FR Doc. 81-23635 Filed 8-13-81; 8:45 am]  
BILLING CODE 7035-01-M

**Intent To Engage in Compensated Intercompany Hauling Operations**

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercompany hauling operations as authorized in 49 U.S.C. 10524(b).

(1) Parent corporation and address of principal office: General Foods Corporation (a Delaware corporation), 250 North Street, White Plains, New York 10625.

(2) Wholly-owned subsidiaries which will participate in the operations, and states of incorporation:

- (a) Birds Eye, Inc. (Delaware).
- (b) Burger Chef Systems, Inc. (Indiana).
- (c) Burger Chef Distributing Corporation (Delaware).
- (d) Claussen Pickle Company, Inc. (Delaware).
- (e) Chef's Pantry, Inc. (Ohio).
- (f) Don's Prize, Inc. (Ohio).
- (g) General Foods Caribbean Manufacturing Corporation (Delaware).
- (h) General Foods Domestic International Sales Company, Inc. (Delaware).
- (i) General Foods Inc. (Puerto Rico).
- (j) General Foods Overseas Development Corporation (Delaware).
- (k) General Foods Trade Funding Corporation (Delaware).
- (l) General Foods Trading Company (Delaware).
- (m) Hudson Commercial Corporation (Delaware).
- (n) Italsalumi, Inc. (Illinois).
- (o) Kohrs Packing Company (Illinois).
- (p) Oscar Mayer & Co., Inc. (Delaware).
- (q) Oscar Mayer & Co., Inc. (Pennsylvania).
- (r) Oscar Mayer Export, LTD (Wisconsin).
- (s) Maxwell House, Inc. (Delaware).
- (t) Meriwether's Restaurants, Inc. (Delaware).
- (u) OM Food Products, Inc. (Delaware).
- (v) OM Holdings, Inc. (Delaware).
- (w) OM Ingredients, Inc. (Delaware).
- (x) Powell Valley Foods, Inc. (Ohio).
- (y) Quality Industrial Plastics, Co., Inc. (Delaware).
- (z) Rix Systems, Inc. (Indiana).
- (aa) Scientific Protein Laboratories, Inc. (Illinois).
- (bb) Valley Turkeys, Inc. (California).
- (cc) Birds Eye de Mexico, S.A. de C.V. (Mexico).
- (dd) Canterbury Foods (Alberta) LTD (Alberta, Canada).
- (ee) Franklin Baker Company of the Philippines (Philippines).



- (ff) General Foods, Inc. (Canada).
- (gg) General Foods Commercial Sales, Inc. (Canada).
- (hh) Hostess Food Products Limited (Ontario, Canada).
- (ii) ICL Food Services, LTD (Brit. Col., Canada).
- (jj) White Spot Limited (Ontario, Canada).

1. The parent corporation is Liquid Sugars, Inc. and the address of its principal office is Post Office Box 96, Oakland, California 94604.

2. The only wholly-owned subsidiary of Liquid Sugars, Inc. which will participate in the operations is Liquid Sugar Transportation Corporation, incorporated under the laws of the State of California.

(1) Parent corporation and address of principal office: Sheriff Construction Company, Inc., Route 1, Rumsey Road, Eastanollee, Georgia 30538.

(2) Wholly-owned subsidiaries which will participate in the operations, and State of incorporation:

(a) Pago Supply, Inc., incorporated in the State of Georgia, November 29, 1978, Route 1, Rumsey Road, Eastanollee, Georgia 30538.

1. Parent Corporation and address of principal office: SONAM, 9 West 57th Street, New York, NY 10019.

2. Wholly-owned subsidiary which will participate in the operations, and the address of their respective principal office: Harvey Raymond, Inc., 9 West 57th Street, New York, NY 10019.

1. Parent Corporation and address of principal office: Walgreen Co., 200 Wilmot Road, Deerfield, Illinois 60015.

2. Wholly-owned Subsidiary which will participate in the operations, and states of incorporation: Wilmot Trading Company, Ltd., c/o Alastair Loudon Barclay Bank Bldg., George Town, Grand Cayman, Cayman Islands, United States Office at 102 Wilmot Road, Suite 440, Deerfield, Illinois 60015.

Agatha L. Mergenovich,  
Secretary.

[FR Doc. 81-23638 Filed 8-13-81; 8:45 am]

BILLING CODE 7035-01-M

[Docket Nos. AB-2 (Sub-29F) et al.]

#### Louisville and Nashville Railroad Co. et al.; Certificates of Abandonment

In the matter of Louisville and Nashville Railroad Company—Abandonment Between Bruceton and Rose Hill, TN [Docket No. AB-2 (Sub-No. 29F)]; Louisville and Nashville Railroad Company—Abandonment Between Paducah and Murray, KY [Docket No. AB-2 (Sub-No. 30F)]; Illinois Central Gulf Railroad Company—Abandonment Between Fordsville and

Owensboro, KY [Docket No. AB-43 (Sub-No. 68F)]; Illinois Central Gulf Railroad Company—Abandonment at Elizabethtown, KY [Docket No. AB-43 (Sub-No. 69F)]; and Illinois Central Gulf Railroad Company—Abandonment Between Hopkinsville, KY and Nashville, TN [Docket No. AB-43 (Sub-No. 70 F)].

Notice of the above noted abandonments was published in the *Federal Register* at 46 FR 19625, March 31, 1981, indicating that certificates of abandonment would be issued unless appropriate financial assistance offers were received within 10 days of the notice. This notice is now vacated. Notice will be republished concurrently with issuance of the Commission's administratively final decision for those abandonments which are ultimately approved.

Agatha L. Mergenovich,  
Secretary.

[FR Doc. 81-23632 Filed 8-13-81; 8:45 am]

BILLING CODE 7035-01-M

#### Finance Applications; Decision-Notice

The following applications, filed on or after July 3, 1980, seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations, and securities issuances) may be involved.

The applications are governed by Special Rule 240 of the Commission's Rules of Practice (49 CFR 1100.240). See Ex Parte 55 (Sub-No. 44), *Rules Governing Applications Filed By Motor Carriers Under 49 U.S.C. 11344 and 11349*, 363 I.C.C. 740 (1981). These rules provide among other things, that opposition to the granting of an application must be filed with the Commission in the form of verified statements within 45 days after the date of notice of filing of the application is published in the *Federal Register*. Failure seasonably to oppose will be construed as a waiver of opposition and participation in the proceeding. If the protest includes a request for oral hearing, the request shall meet the requirements of Rule 242 of the special rules and shall include the certification required.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.241. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and

payment to applicant of \$10.00, in accordance with 49 CFR 1100.241(d).

*Amendments to the request for authority will not be accepted after the date of this publication.* However, the Commission may modify the operating authority involved in the application to conform to the Commission's policy of simplifying grants of operating authority.

*We find*, with the exception of those applications involving impediments (e.g., jurisdictional problems, unresolved fitness questions, questions involving possible unlawful control, or improper divisions of operating rights) that each applicant has demonstrated, in accordance with the applicable provisions of 49 U.S.C. 11301, 11302, 11343, 11344, and 11349, and with the Commission's rules and regulations, that the proposed transaction should be authorized as stated below. Except where specifically noted this decision is neither a major Federal action significantly affecting the quality of the human environment nor does it appear to qualify as a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests as to the finance application or to any application directly related thereto filed within 45 days of publication (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (unless the application involves impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. To the extent that the authority sought below may duplicate an applicant's existing authority, the duplication shall not be construed as conferring more than a single operating right.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice of effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

Dated: August 6, 1981.

By the Commission, Review Board Number 3, Members Krock, Joyce, and Dowell.

Agatha L. Mergenovich,  
Secretary.

MC-F-14642, filed July 27, 1981.  
ROCOR INTERNATIONAL (Rocor), 1703 Embarcadero Road, Palo Alto, CA 94303—lease—BEVTRANS, INC. (Bevtrans), 330 New York Avenue, Hartford, CT 06101. Representative: Richard G. Lougee, P.O. Box 10061, Palo Alto, CA 94303. Rocor seeks authority to lease the operating rights of Bevtrans for



a period of one year. David P. Roush and Diane G. Roush who control Rocor seek to lease Bevtrans' authority through the transaction. Bevtrans holds contract carrier authority under MC-145305 to serve the facilities of Heublein, Inc. on a nationwide basis. Rocor is a non-carrier holding company which controls through stock ownership No. MC-116544—Altruk Freight Systems Inc., MC-26739—Alfarm Trucklines, MC-37172—VanGo and MC-71459—Western FreightWays. Application has been filed for temporary authority.

[FR Doc. 81-23630 Filed 8-13-81; 8:45 am]

BILLING CODE 7035-01-M

#### Finance Applications; Decision-Notice

As indicated by the findings below, the Commission has approved the following applications filed under 49 U.S.C. 10924, 10926, 10931 and 10932.

##### We find:

Each transaction is exempt from section 11343 (formerly section 5) of the Interstate Commerce Act, and complies with the appropriate transfer rules.

This decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

Petitions seeking reconsideration must be filed within 20 days from the date of this publication. Replies must be filed within 20 days after the final date for filing petitions for reconsiderations; any interested person may file and serve a reply upon the parties to the proceeding. Petitions which do not comply with the relevant transfer rules at 49 CFR 1132.4 may be rejected.

If petitions for reconsideration are not timely filed, and applicants satisfy the conditions, if any, which have been imposed, the application is granted and they will receive an effective notice. The notice will indicate that consummation of the transfer will be presumed to occur on the 20th day following service of the notice, unless either applicant has advised the Commission that the transfer will not be consummated or that an extension of time for consummation is needed. The notice will also recite the compliance requirements which must be met before the transferee may commence operations.

Applicants must comply with any conditions set forth in the following decision-notices within 30 days after publication, or within any approved extension period. Otherwise, the decision-notice shall have no further effect.

#### It is Ordered:

The following applications are approved, subject to the conditions stated in the publication, and further subject to the administrative requirements stated in the effective notice to be issued hereafter.

By the Commission, Review Board Number 3, Krock, Joyce and Dowell.

Agatha L. Mergenovich,  
Secretary.

FD 29663. By decision of 8/25/81 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1151, Review Board Number 3 approved the transfer to SHORELINE INTERNATIONAL, INC., of Seattle, WA, of Permit No. FP-437 issued to CENTURY FORWARDERS, INC., of New York, NY, authorizing *used automobiles*, between points in the United States (including Hawaii but excluding Alaska). Restriction: The authority granted above is restricted to export-import traffic. *Used household goods and unaccompanied baggage*, between points in the United States (including Hawaii but excluding Alaska). Applicant's representative: Alan F. Wohlstetter, 1700 K St., N.W., Washington, DC 20006. Transfer is not a carrier.

[FR Doc. 81-23631 Filed 8-13-81; 8:45 am]

BILLING CODE 7035-01-M

[Permanent Authority Volume No. OPY-3-143]

#### Republications of Grants of Operating Rights Authority Prior to Certification; Notice

The following grants of operating rights authorities are republished by order of the Commission to indicate a broadened grant of authority over that previously noticed in the Federal Register.

An original and one copy of opposing verified statements must be filed with the Commission within 45 days after the date of this Federal Register notice. Applicant may file a verified statement in rebuttal within 60 days. Such pleadings shall comply with 49 CFR 1100.247 (renumbered 1100.251) addressing specifically the issue(s) indicated as the purpose for republication. Special Rule 247 (renumbered 251) was published in the Federal Register of July 3, 1980, at 45 FR 45539.

MC 9914 (Sub-17) (republication), filed February 19, 1981, published in the Federal Register issue of March 24, 1981. Applicant: WARREN TRUCKING COMPANY, INC., P.O. Box 2038, Martinsville, VA 24112. Representative:

D. R. Beeler, 1216 Columbia Avenue, Franklin, TN 37064. A Decision of the Commission, Review Board Number 3, decided June 24, 1981, and served July 9, 1981, finds that the performance by applicant of the service described herein will serve a useful public purpose, responsive to a public demand or need to operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *furniture and fixtures* (1) between Houston, TX, Atlanta, GA, and points in Passaic County, NJ, Cook County, IL, and Hamblen County, TN, and (2) between points in Knox County, TN, Luzerne County and Wood, PA, on the one hand, and, on the other, points in Virginia and North Carolina; that applicant is fit, willing, and able properly to perform the granted service and to conform to statutory and administrative requirements. The purpose of this republication is to reflect applicant's actual grant of authority.

By the Commission.

Agatha L. Mergenovich,  
Secretary.

[FR Doc. 81-23633 Filed 8-13-81; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-36 (Sub-12F)]

#### Oregon Short Line Railroad Company—Abandonment and Discontinuance of Service by Union Pacific Railroad Company Between Tetonia and Victor, ID; Findings

Notice is hereby given pursuant to 49 U.S.C. 10903 that the Commission, Review Board Number 3, has issued a certificate authorizing the Oregon Short Line Railroad Company to abandon and for Union Pacific Railroad Company to discontinuance service over a portion of railroad known as the Teton Valley Branch extending from railroad milepost 30.75 near Tetonia to the end of the line at milepost 45.79 near Victor, a distance of 15.04 miles in Teton County, ID, subject to certain conditions. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that:

(1) A financially responsible person (or government entity) has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and

(2) It is likely that:

(a) If a subsidy, the assistance would cover the difference between the revenues attributable to the line and the avoidable cost of providing rail freight service on the line, together with a



reasonable return on the value of the line, or

(b) If a purchase, the assistance would cover the acquisition cost of all or any portion of the line.

Any financial assistance offer must be filed with the Commission and served concurrently on the applicant, with copies to Ms. Ellen Hanson, Room 5417, Interstate Commerce Commission, Washington, DC 20423, no later than 10 days from publication of this Notice.

If the Commission makes the findings described above, the effectiveness of the abandonment certificate will be postponed. An offeror may request the Commission to set conditions and amount of compensation within 30 days after an offer is made. If no agreement is reached within 30 days of an offer, and no request is made for the Commission to set conditions or amount of compensation, the abandonment certificate will become effective.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 (as amended by the Staggers Rail Act of 1980, Pub. L. 96-448) and 49 CFR 1121.38.

Agatha L. Mergenovich,  
Secretary.

[FR Doc. 81-23637 Filed 8-13-81; 8:45 am]

BILLING CODE 7035-01-M

#### [Ex Parte No. 311]

#### Expedited Procedures for Recovery of Fuel Costs

Decided: August 11, 1981.

In recent decision, an 18.0-percent surcharge was authorized on all owner-operators traffic, and on all truckload traffic whether or not owner-operators were employed. We ordered that all owner-operators were to receive compensation at this level.

The weekly figure set forth in the appendix for transportation performed by owner-operators and for truckload traffic is 17.9-percent. Accordingly, we are authorizing that the surcharge for this traffic remain at 18.0 percent. All owner-operators are to receive compensation at this level.

No change is authorized on the 3.1-percent surcharge on less-than-truckload (LTL) traffic performed by carriers not using owner-operators, the 6.7-percent surcharge for the bus carriers, or the 2.0-percent surcharge for United Parcel Service.

Notice shall be given to the general public by mailing a copy of this decision to the Governor of each State and to the Public Utilities Commission or Boards of each State having jurisdiction over transportation by depositing a copy in

the Office of the Secretary, Interstate Commerce Commission, Washington, D.C. for public inspection and by depositing a copy to the Director, Office of the Federal Register for publication therein.

*It is ordered:*

This decision shall become effective Friday 12:01 a.m., August 14, 1981.

By the Commission, Chairman Taylor, Commissioners Gresham, Clapp, and Gilliam.  
Agatha L. Mergenovich,  
Secretary.  
August 10, 1981.

#### Appendix—Fuel Surcharge

| Base date and price per gallon (including tax)                         |        |
|------------------------------------------------------------------------|--------|
| January 1, 1979                                                        | 63.5¢  |
| Date of current price measurement and price per gallon (including tax) |        |
| August 10, 1981                                                        | 130.8¢ |

|                                                                  | Transportation performed by— |                    |              |      |
|------------------------------------------------------------------|------------------------------|--------------------|--------------|------|
|                                                                  | Owner operator <sup>1</sup>  | Other <sup>2</sup> | Bus carriers | UPS  |
|                                                                  | (1)                          | (2)                | (3)          | (4)  |
| Average percent fuel expenses (including taxes) of total revenue | 16.9                         | 2.9                | 6.3          | 3.3  |
| Percent surcharge developed                                      | 17.9                         | 3.1                | 6.7          | *2.8 |
| Percent surcharge allowed                                        | 18.0                         | 3.1                | 6.7          | *2.0 |

<sup>1</sup> Apply to all truckload rated traffic.

<sup>2</sup> Including less-than-truckload traffic.

\* The percentage surcharge developed for UPS is calculated by applying 81 percent of the percentage increase in the current price per gallon over the base price per gallon to UPS average percent of fuel expense to revenue figure as of January 1, 1979 (3.3 percent).

\* The developed surcharge is reduced 0.8 percent to reflect fuel-related increases already included in UPS rates.

[FR Doc. 81-23739 Filed 8-13-81; 8:45 am]

BILLING CODE 7035-01-M

#### Motor Carriers; Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after February 9, 1981, are governed by Special Rule of the Commission's Rules of Practice, see 49 CFR 1100.251. Special Rule 251 was published in the Federal Register on December 31, 1980, at 45 FR 86771. For compliance procedures, refer to the Federal Register issue of December 3, 1980, at 45 FR 80109.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.252. Applications may be protested *only* on the grounds that applicant is not fit, willing, and able to provide the transportation service or to comply with the appropriate statutes and Commission regulations. A copy of any application, including all supporting evidence, can be obtained from applicant's representative upon request and payment to applicant's representative of \$10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

#### Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily that each applicant has demonstrated a public need for the proposed operations and that it is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. This presumption shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication (or, if the application later become unopposed), appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

**Note.**—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Please direct status inquiries to the Ombudsman's Office, (202) 275-7326.

Volume No. OPY-2-147

Decided: August 7, 1981.



By the Commission, Review Board No. 1. Members Parker, Chandler, and Fortier. (Member Fortier not participating.)

MC 128942 (Sub-2), filed July 28, 1981. Applicant: TUCKER VAN & STORAGE, INC., 1676 Contra Costa St., Sand City, CA 93955. Representative: James A. Cota (same as applicant), (408) 394-6586. Transporting *used household goods* for the account of the United States Government incident to the performance of a pack-and-crate service on behalf of the Department of Defense, between points in the U.S.

MC 144682 (Sub-58), filed July 31, 1981. Applicant: R. R. STANLEY, 1738 Empire Central, Dallas, TX 75235. Representative: D. Paul Stafford, P.O. Box 45536, Dallas, TX 75245, 214-358-3341. Transporting, for or on behalf of the United States Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), between points in the U.S.

MC 150812 (Sub-3), filed July 30, 1981. Applicant: FROST TRANSPORTATION, INC., P.O. Box 3400, Shreveport, LA 71103. Representative: Joseph A. Keating, Jr., 121 S. Main St., Taylor, PA 18517, 717-344-8030. Transporting, for or on behalf of the United States Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), between points in the U.S.

MC 157362, filed July 27, 1981. Applicant: WBG TRANSPORT, INC., 6224 South Marshfield Avenue, Chicago, IL 60636. Representative: Abraham A. Diamond, 29 South La Salle Street, Chicago, IL 60603, (312) 236-0548. As a *broker of general commodities* (except household goods), between points in the U.S.

MC 157363, filed July 23, 1981. Applicant: FLOYD O. RAGLAND and EMMA L. RAGLAND, d.b.a. E. L. MAY CO., 991 Molly Cove, Memphis, TN 38122. Representative: Thomas A. Buford, 502 Dermon Building, Memphis, TN 38103, (901) 527-4158. Transporting *shipments weighing 100 pounds or less* if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S.

MC 157392, filed July 24, 1981. Applicant: DON SMITH, Route 1, Box 13, Norwood, MO 65717. Representative: Don Smith (same address as applicant), (417) 746-4635. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers*, and *other soil conditioners*, by the

owner of the motor vehicle in such vehicle, between points in the U.S.

MC 157393, filed July 27, 1981. Applicant: COMMERCIAL FREIGHT BROKERS, INC., 5223 Oakdale Drive, Oak Lawn, IL 60543. Representative: William J. Boyd, 2021 Midwest Rpad, Suite 205, Oak Brook, IL 60521, 312-629-2900. As a *broker of general commodities* (except household goods), between points in the U.S.

MC 157403, filed July 24, 1981. Applicant: WILLIAM L. NORFLEET, d.b.a. B & D ENTERPRISE, P.O. Box 441, 1206 N. Lincoln St., Greensburg, IN 47240. Representative: William L. Norfleet (same address as applicant), (812) 663-7186. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers*, and *other soil conditioners* by the owner of the motor vehicle in such vehicle, between points in the U.S. Condition: The person or persons who appear to be engaged in common control of another regulated carrier must either file an application under 49 U.S.C. § 11343(a) or submit an affidavit indicating why such approval is unnecessary to the Secretary's office. In order to expedite issuance of any authority, please submit a copy of the affidavit or proof of filing the application(s) for common control to Team 2, Room 2379.

#### Volume No. OPY-4-310

Decided: August 5, 1981.

By the Commission, Review Board No. 2. Members Carleton, Fisher, and Williams.

MC 154627, filed July 27, 1981. Applicant: SEA-TRADE SERVICE, INC., 5658 West Marginal Way SW., Seattle, WA 98106. Representative: Jack R. Davis, 1100 IBM Building, Seattle, WA 98101, (206) 282-2750. Transporting for or on behalf of the United States Government *general commodities* (except used household goods, hazardous or secret materials and sensitive weapons and munitions) between points in the U.S.

MC 157287, filed July 23, 1981. Applicant: SHOCKOE SHIPPERS, INC., 104 Shockoe Slip, Richmond, VA 23219. Representative: S. E. Keene (same address as applicant), (804) 780-2874. As a *broker of general commodities* (except household goods), between points in the U.S.

MC 157387, filed July 23, 1981. Applicant: CASTELAZO & ASSOCIATES, 5420 W. 104th St., Los Angeles, CA 90045. Representative: Allen R. Sundell (same address as applicant), (213) 649-3210. As a *broker*

*of general commodities* (except household goods), between points in the U.S.

MC 157397, filed July 29, 1981. Applicant: CTS TRUCKING, INC., d.b.a. CHADWICK TRANSPORTATION SERVICE, P.O. Box 12109, Norfolk, VA 23502. Representative: M. L. Chadwick (same address as applicant), (804) 464-9554. Transporting, for or on behalf of the United States Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), between points in the U.S.

Agatha L. Mergenovich,  
Secretary.

[FR Doc. 81-23778 Filed 8-13-81; 8:45 am]

BILLING CODE 7035-01-M

#### [Volume No. OR-9-VOL-86]

#### Motor Carriers; Permanent Authority Decisions; Decision-Notice

Decided: August 7, 1981.

The following applications, filed on or after July 3, 1980, are governed by Special Rule 247 of the Commission's Rules of Practice, see 49 CFR 1100.247. Special Rule 247 was published in the *Federal Register* of July 3, 1980, at 45 FR 45539. For compliance procedures, refer to the *Federal Register* issue of December 3, 1980, at 45 FR 80109.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.247(B). A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of \$10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

#### Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated its proposed service warrants a grant of the application under the governing section of the Interstate Commerce Act. Each applicant is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where noted, this decision is neither a major Federal action significantly affecting the



quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient interest in the form of verified statements filed on before 45 days from date of publication, (or, if the application later becomes unopposed) appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams.

Agatha L. Mergenovich,  
Secretary.

**Note.**—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

MC 152887F, filed November 25, 1980, previously noticed in the Federal Register issue of December 16, 1980, and republished this issue. Applicant: SPEEDS AUTOMOTIVE, INC., 120 SE. Clay, Portland, OR 97214. Representatives: Gary R. Coe, 11115 SW. 135th, Portland, OR 97223. Transporting wrecked, disabled, repossessed, or stolen vehicles, motorized equipment, or truck glider kits, between points in OR, ID, CA, NV, and WA. Condition: Issuance of a certificate in this proceeding is conditioned upon applicant's request, in writing, for coincidental cancellation of Certificate MC-152887, issued June 16, 1981.

**Note.**—The purpose of this republication is to correct the commodity description.

[FR Doc. 81-23778 Filed 8-13-81; 8:45 am]

BILLING CODE 7035-01-M

#### [Volume No. 141]

#### Motor Carriers; Permanent Authority Decisions; Restriction Removals; Decision-Notice

Decided: August 11, 1981.

The following restriction removal applications, filed after December 28, 1980, are governed by 49 CFR Part 1137. Part 1137 was published in the Federal Register of December 31, 1980, at 45 FR 86747.

Persons wishing to file a comment to an application must follow the rules under 49 CFR 1137.12. A copy of any application can be obtained from any applicant upon request and payment to applicant of \$10.00.

Amendments to the restriction removal applications are not allowed.

Some of the applications may have been modified prior to publication to conform to the special provisions applicable to restriction removal.

#### Findings

We find, preliminarily, that each applicant has demonstrated that its requested removal of restrictions or broadening of unduly narrow authority is consistent with 49 U.S.C. 10922(h).

In the absence of comments filed within 25 days of publication of this decision-notice, appropriate reformed authority will be issued to each applicant. Prior to beginning operations under the newly issued authority, compliance must be made with the normal statutory and regulatory requirements for common and contract carriers.

By the Commission, Restriction Removal Board, Members Sporn, Ewing, and Shaffer.  
Agatha L. Mergenovich,  
Secretary.

MC 75138 (Sub-4)X, filed June 23, 1981, published in the Federal Register of July 22, 1981, republished as corrected this issue. Applicant: OGDEN TRANSFER AND STORAGE COMPANY, 2105 Wall Avenue, Ogden, UT 84401. Representative: Thomas R. Kingsley, 10614 Amherst Avenue, Silver Spring, MD 20902. Applicant seeks to remove restrictions in its lead and Sub-No. 2 certificates to (1) broaden the commodity descriptions: in the lead certificate, to (a) "forest products, and miscellaneous products of manufacturing" from Christmas trees; (b) "rubber and plastic products, chemicals and related products, and miscellaneous products of manufacturing" from toys, children's vehicles, and toy vehicles; (c) "pulp, paper and related products" from stationery; (d) "clay, concrete, glass or stone products" from glassware; (e)

"household goods, and furniture and fixtures" from household goods; (f) "Mercer commodities" from machinery, materials and supplies incidental to the construction, development, operation and maintenance of facilities for the discovery, development, and production of natural gas and petroleum; (g) "clay, concrete, glass or stone products, metal products machinery, and lumber and wood products" from culverts, metal trough and lumber; (h) "those commodities which because of their size or weight require the use of special handling and equipment" from heavy machinery; (i) remove all restrictions in the general commodities authority "except classes A and B explosives"; and in Sub-No. 2, "household goods, and furniture and fixtures" from household goods as defined by the Commission; (2) replace one-way authority with radial authority in the first four paragraphs of the lead certificate; and (3) broaden named points to authorize county-wide service: lead certificate, Box Elder, Weber, Davis and Morgan Counties, UT (Ogden, UT); Salt Lake, Davis and Morgan Counties, UT (Salt Lake City, UT); Utah County, UT (Provo, UT); Cache and Box Elder Counties, UT (Logan, Brigham City, and Smithfield, UT); Weber, Davis, Box Elder, Morgan, Cache, Rich, Salt Lake, and Summit Counties, UT (Ogden, UT and points within 25 miles thereof); and Box Elder, Cache, Davis, Morgan and Weber Counties, UT (Ogden, UT and points within 10 miles thereof). The purpose of this republication is to correct the county designations in part 3.

MC 108473 (Sub-57)X, filed June 30, 1981. Applicant: ST. JOHNSBURY TRUCKING COMPANY, INC., 87 Jeffrey Avenue, Holliston, MA 01746. Representative: Harry J. Jordan, John D. Quinn, Suite 502, Solar Building, 1000 16th Street, NW., Washington, DC 20423. Applicant seeks to remove restrictions in its lead and Sub-Nos. 36, 37, 38, 39F, 41, 43F, 44F, 45, 46F, 47F, 48F and 52F certificates to (1) broaden the commodity description from general commodities (with exceptions) to "general commodities (except classes A and B explosives);" from bed, bed springs, mattresses, couches, cots, hammocks, sofas, pillows, and bedding to "textile mill products and furniture and fixtures;" dairy products to "farm products, food and related products;" meats, meat products, and meat by-products and dairy products as described in sections A and B of Appendix I to the report in descriptions in Motor Carrier Certificates, 61 M.C.C. 709, and fish and fish products, in refrigerated equipment to "farm



products, food and related products;" agricultural commodities and canned goods to "farm products, food and related products;" paper to "pulp, paper and related products;" canned goods to "food and related products;" compressed gasses and empty containers therefore to "petroleum, natural gas and their products;" malt beverages and empty malt beverage containers to "food and related products;" apples to "farm products;" salt, peat moss, shell and fish meal to "chemicals and related products, ores and minerals, and food and related products;" granite and granite statuary to "clay, concrete, glass or stone products;" paper, and paper mill supplies to "pulp, paper, and related products;" waste paper, rags, and scrap cloth materials and scrap materials to "waste or scrap materials, not identified;" brass and copper ingots and copper rod to "metal products;" fertilizer and fertilizer compounds (except fertilizer, and fertilizer compounds in bulk) to "chemicals and related products;" packing-house products, (except liquid packing-house products, in bulk, in tank vehicles) to "food and related products;" petroleum products, in containers to "petroleum, natural gas and their products;" frozen fruits and frozen vegetables, and fresh poultry, and fresh vegetables to "food and related products;" wooden box shop products to "lumber and wood products;" chemicals, except in bulk, in tank vehicles to "chemicals and related products;" frozen potato products to "food and related products;" soap, glycerine, and toilet preparations (except in bulk) to "chemicals and related products;" commodities, the transportation of which because of size or weight require the use of special equipment, related machinery contractors' materials and supplies when their transportation is incidental to the transportation of commodities which by reason of size or weight require special equipment, and wrecked or disable motor vehicles (not including new motor vehicles) to "those commodities which because of size or weight require the use of special handling or equipment and transportation equipment", in the lead; and dairy products (except in bulk) to "farm products, food and related products", in Sub-No. 36, (2) authorize service at all intermediate points in the regular route portion, in the lead and Sub-Nos. 39, 41, 42, 43, 44, 46, 50 and 51, (3) replace one-way authority with round-trip authority, in the lead and Sub-Nos. 36 and 51, (4) broaden the territorial description by substituting county-wide authority for city-wide

authority as follows: Springfield, Woodstock, Quecnee, and White River Jct., VT to Windsor County, VT; Peterborough and Manchester, NH to Hillsboro County, NH; points in that part of Sullivan County, NH, (with described boundaries) to Sullivan County, NH; from points within 5 miles of Springfield, MA, to points in Hampden County, MA; from New Haven, West Haven, Orange, Guilford, Madison, Ansonia, Waterville, and Hamden, CT, to New Haven County, CT; from Apponaug, Hills Grove, Coventry and Warwick, RI, to Kent County, RI; from Vineland, NJ, to Cumberland County, NJ; from Newport, Old Town, Orono, and Corinna, ME, to Penobscot County, ME; from points within 30 miles of Newport, ME, except Anson, Athens, Cambridge, Canaan, Cornville, Dead River Plantation, Detroit, East Madison, Fairfield, Harmony, Hartland, Hinckley, Lakewood, Madison, Norridgewock, North Anson, North Cornville, Palmyra, Shawmut, Skowhegan, Solon, Wellington, and West Athens, ME, to points within 30 miles of Newport, ME; from Colebrook, NH, and points within 30 miles of Colebrook, NH, to Coos County, NH; from Fitchburg, Blackstone, S. Royalstone, Baldwinville, Otter River, Berlin, W. Berlin, S. Bolton, Bolton, S. Lancaster, N. Lancaster, Shrewsbury, Cherry Valley, Milbury, Clinton, Lancaster, Gardner, Athol, Barre, Oxford, Milford, Grafton, and Leominster, MA, to Worcester County, MA; from those portions of Oxford, Franklin, Somerset, and Piscataquis Counties, ME, on and south of Maine Highway 11 to Oxford, Franklin, Somerset, and Piscataquis Counties, ME; from points of U.S. Highway 1 between New Haven, CT, and Greenwich, CT, both inclusive, to points on U.S. Highway 1 between New Haven, CT and Greenwich, CT, and to New Haven and Fairfield Counties, CT; from New Bedford, Taunton, and North Dighton, MA, to Bristol County, MA; from Mattapan, Chelsea and Revere, MA, to Suffolk County, MA; from Cambridge, Somerville, Medford, Melrose, Arlington, Everett, Concord, Woburn, Winchester, Wakefield, Wilmington, W. Groton, Groton, Dunstable, E. Pepperell, Pepperell, Townsend, W. Townsend, Framingham, Natick, Maynard, Ayer, Hudson, Watertown, Reading, Lowell, and Malden, MA, to Middlesex County, MA; from Lenox, Housatonic, Lee, Dalton, Williamstown, Lanesboro, Becket, Great Barrington, Storckbridge, and Laurel, MA, to Berkshire County, MA; from Canton, Brookline, Quincy, Weymouth, Braintree, Needham, Millis, and Milton, MA, to Norfolk County, MA;

from Orange, and Buckland, MA, to Franklin County, MA; from Clifton, Haledon, Passaic and Paterson, NJ, to Passaic County, NJ; from Manville and Somerville, NJ, to Somerset County, NJ; from Belleville, Irvington, and East Orange, NJ, to Essex County, NJ; from Trenton, NJ, to Mercer County, NJ; from Mamaroneck and Port Chester, NY, to Westchester County, NY; from Woonsocket, Slatersville, Greystone, Pascoag, Howard, Cranston, Valley Falls, Phillysdale, Manville, Fiskville, and Centerdale, RI, to Providence County, RI; from Brattleboro, Bellows Falls, and Hinesburg, VT, to Windham County, VT; from Brandon, Castleton, and Rutland, VT, to Rutland County, VT; from Vergennes, VT, to Addison County, VT; from Newport, RI, to Newport County, RI; from Barre, VT, to Washington and Orange Counties, VT; from Manchester, VT, to Bennington County, VT; from Berlin, Gorham, Stewartstown, Pittsburg, and Clarkstown, NH, to Coos County, NH; from Lebanon, Oxford, Piermont, Lyme, Beebe River, Campton, and Hanover, NH, to Grafton County, NH; from Providence, RI, to Providence, Kent and Newport Counties, RI, and Bristol County, MA; from Winthrop, ME, to Kennebec County, ME; from Portland, ME, to Cumberland and York Counties, ME; from Mechanic Falls, Livermore Falls, Lisbon Falls and Minot, ME, to Androscoggin County, ME; from Manchester, Burnside, Unionville, New Britain, and Taftville, CT, to Hartford County, CT; from Stamford, S. Norwalk, Rowayton, New Canaan, Springdale, Bridgeport, Glenbrook, Old Greenwich, Mianus, Riverside, Westport, Norwalk, Greenwich, Shelton, Newton, and Danbury, CT, to Fairfield County, CT; from Westfield, Springfield, Feeding Hills, Southwick, Blandford, and Holyoke, MA, to Hampden County, MA; from Bogata, NJ, to Bergen County, NJ; from Carteret, New Brunswick, and Perth Amboy, NJ, to Middlesex County, NJ; from Newark, NJ, to Union, Essex, Bergen, Middlesex and Hudson Counties, NJ; from Riverside, NJ, to Burlington County, NJ; from Marcus Hook, PA, to Delaware County, PA; from Springfield, MA, to Hampden County, MA, and Hartford County, CT; from Hackettstown, NJ, to Warren County, NJ; from Morristown, NJ, to Morris County, NJ; from Sussex, NJ, to Sussex County, NJ; from Landover, MD, to Prince George's County, MD; from Norristown, and Bridgeport, PA, to Montgomery County, PA; from East Jaffrey, Ashuelot, Winchester, Westport, Harrisville, Dublin, Rindge, Keene, and West Swanzey, NH, to Cheshire County,



NH; from Westerly and Bradford, RI, to Washington County, RI; from Bristol, Barrington, and Warren, RI, to Bristol County, RI; from Portland, Pine Point, Westbrook, ME to Cumberland County, ME; from Ellenville, NY, to Ulster County, NY; from Jersey City, NJ, to Essex, Hudson, Union, and Middlesex Counties, NJ; from Middlebury, VT, to Addison County, VT; from Jay and Kingfield, ME, to Franklin County, ME; from E. Corinth, Tunbridge, Chelsea, Washington, Randolph Center, and Randolph, VT, to Orange County, VT; from Beecher Falls, and Gilman, VT, to Essex County, VT; from Greensboro Bend, VT, to Orleans County, VT; from Elmore Lake and Johnson, VT, to Lamoille County, VT; from Swanton, VT, to Franklin County, VT; from E. Charlotte and Mechanicsville, VT, to Chittenden County, VT; from Old Orchard, ME, to York County, ME; from Bucksport, ME, to Hancock County, ME; from Anson, Athens, Cambridge, Canaan, Cornville, Detroit, E. Madison, E. New Portland, Fairfield, Harmony, Hartland, Hinckley, Lakewood, Madison, New Portland, Morrisset, North Anson, North New Portland, Palmyra, Shawmut, Skowhegan, Solon and W. Athens, ME, to Somerset County, ME; from Rumford, ME, to Oxford County, ME; from Boothbay Harbor, ME, to Lincoln County, ME; from Downingtown, PA, to Chester, PA; from Pleasantville, NJ, to Atlantic County, NJ; from Hamilton, Wenham, Danvers, Peabody, Swampscott, Lynnfield, Salem, Saugus, Lynn, Gloucester, Beverly, Ipswich, Haverhill, Amesbury, Newburyport, MA, to Essex County, MA; from Northfield, S. Northfield, Plainfield, Riverton, E. Calais, Cabot, Woodbury, Marshfield, E. Barre, Worcester, Warren, Moretown, N. Montpelier, Wrightsville, Warren, and Woodbury, VT, to Washington County, VT; from Hardwick, VT, to Caledonia County, VT; from Danielson and Willimantic, CT, to Windham County, CT; from Rockville, CT, to Tolland, CT; from Rensselaer and Troy, NY, to Rensselaer County, NY; from Broadalbin, Northville, Gloversville, and Vail Mills, NY, to Fulton County, NY; from Fonda, Amsterdam, and Fort Plain, NY, to Montgomery County, NY; from Canandaigua, Holcomb, Clifton Springs, Shortsville, Gorham Hall, Stanley, and Victor, NY, to Ontario County, NY; from Canastota and Oneida, NY, to Madison County, NY; from Oakfield, NY, to Genesee County, NY; from Richfield Springs, NY, to Otsego County, NY; from Sauquoit, Stacey Basin, Utica, and Rome, NY, to Oneida County, NY; from

Lancaster, E. Aurora, Hamburg, Orchard Park, Gardenville, and Portageville, NY, to Erie County, NY; from Cold Water, Hilton, Sea Breeze, Scottsville, Honeoye Falls, and Pittsford, NY, to Monroe County, NY; from Lyndonville, NY, to Orleans County, NY; from Castile, Perry, and Pike NY, to Wyoming County, NY; from Cuba, Alfred, Hume, and Canaseraga, NY, to Allegany County, NY; from Hunt, Mount Morris, Sonyea, Tuscarora, Livonia, and Tabors Corner, NY, to Livingston County, NY; from Perkinsville, Hammondsport, Prattsburg, Conesus, Conesus Lake, and Rheims, NY, to Steuben County, NY; from Marion, NY, to Wayne County, NY; from Lakeville, NY, to Livingston County, NY; from Lodi, Willard, and Seneca Falls, NY, to Seneca County, NY; from Spencer, NY, to Tioga County, NY; from Van Etten, Breesport, and Pine City, NY, to Chemung County, NY; from Dundee and Penn Yan, NY, to Yates County, NY; from Wellington, ME, to Piscataquis County, ME; from Goshen and Lempster, NH, to Sullivan County, NH; from E. Rutherford, NJ, to Bergen County, NJ; from Harrison, NJ, to Hudson County, NJ; from Linden and Rahway, NJ, to Union County, NJ; from E. Hampton, Westbrook, Saybrook, and Clinton, CT, to Middlesex County, CT; from Torrington, Winsted, Watertown, New Milford, and Riverston, CT, to Litchfield County, CT; from Old Lyme, Niantic, Waterford, New London, Montville, and Groton, CT, to New London County, CT; from Easthampton and South Hadley Falls, MA, to Hampshire County, MA; from Orange, MA, to Franklin County, MA; from Schenectady, NY, to Schenectady County, NY; from Little Falls, and Herkimer, NY, to Herkimer County, NY; from Auburn, NY, to Cayuga County, NY; from Syracuse, NY, to Onondaga County, NY; from Conshohocken, PA, to Delaware and Montgomery Counties, PA; from Morton, NY, to Orleans and Monroe Counties, NY; from Attica, NY, to Wyoming and Genesee Counties, NY and from Geneva, NY, to Ontario and Seneca Counties, NY, in the lead; from Allentown, PA, to Lehigh County, PA, from Township of Upper Mount Bethel, Lower Mount Bethel, Washington, Plainfield, Bushkill, and Forks, PA, to Northampton County, PA; from Townships of East Rockhill, West Rockhill, and Hiltown, PA, to Bucks County, PA; from Townships of Franconia, Hatfield, Montgomery, and Upper Gwynedd to Montgomery County, PA; from Phillipsburg, NJ, to Warren County, NJ; from Newton and Hopatcong, NJ, to Sussex County, NJ, and from Morris Plains, NJ, to Morris

County, NJ, in Sub-No. 41; from Pottsville, PA, to Schuylkill County, PA; from Bethlehem, Emmaus, Catasagua and Slatington, PA, to Lehigh County, PA; from Walnutport, Easton, and Northampton, PA, to Northampton County, PA; from Lehigh Gap and Weissport, PA, to Carbon County, PA, in Sub-No. 41; and from Malone, Burke, Vermontville, Gabriels, and S. Bangor, NY, to Franklin County, NY; from Bloomingdale, NY to Essex County, NY, and from Conifer and Newton Falls, NY, to St. Lawrence County, NY, in Sub-No. 51, (5) eliminate the following restrictions: In the lead: restricted against the rendition of service at Brunswick, Bath, Woolwich, and Topsham, Maine, and points in their respective commercial zones, as defined by the Commission; in Sub-No. 41: restricted against service between any points on the route between Allentown and Easton, PA, including the points of Allentown and Easton, PA, and in Sub-No. 46F: restricted against the transportation of shipments originating at or destined to New York, NY, and (6) remove the joinder restrictions, in the lead and Sub-No. 46F.

MC-114019 (Sub-268)X, filed July 10, 1981. Applicant: MIDWEST EMERY FREIGHT SYSTEM, INC., 5501 West 79th Street, Burbank, IL 60459. Representative: Arnold L. Burke, 180 North La Salle Street, Chicago, IL 60601. Applicant seeks to remove restrictions from its Sub-Nos. 29, 38, 89, 109, 115, 165, 183, 194, and 198 certificates and E217 and E241 letter notices as follows: (1) Sub-No. 29: (a) broaden the commodity descriptions from frozen foods, bakery products, meats, fruits and fruit juices, pizzas, prepared dough, fish and seafoods, cheese, yeast, etc. to "such merchandise as is dealt in by food business houses"; (b) remove the restriction "in vehicles equipped with merchincal refrigeration"; (c) broaden the specific points of Port Chester, NY; Frankfort, MI; New Kensington, PA; Lafayette, IN; Waseca, MN; Fort Atkinson, WI; Brentwood, MD; Hershey, PA; Green Bay, WI; Cudahy, WI; Mayville, WI; Oshkosh, WI, to Westchester County, NY; Westmoreland County, PA; Tippecanoe County, IN; Waseca County, MN; Jefferson County, WI; Prince Georges County, MD; Dauphin County, PA; Brown County, WI; Milwaukee County, WI; Dodge County, WI; Winnebago County, WI; (2) Sub-No. 38: (a) broaden the commodity descriptions from glassware, glass containers, etc., to "clay, concrete, glass or stone products"; from specific goodstuffs items and related commodities to "such commodities as



are dealt in by food business houses"; from various paper items to "pulp, paper and related products"; from tin plate "metal products"; from machinery, fixtures, and equipment to "machinery"; from cleansing compounds, cleaning and washing compounds, glycerine, processed silica sand and soda ash, etc., to "ores and minerals and chemicals and related products"; from bottle caps to "metal products"; (b) broaden the specific points of St. Bernard, OH to Hamilton County, OH; Norwalk, OH to Huron County, OH; Maywood, IL to Cook County, IL; Cape Girardeau and Hannibal, MO to Cape Girardeau and Marion Counties, MO; Muscatine to Muscatine County, IA; Barrington to Cook County, IL; Onalaska and Oshkosh to La Crosse, and Winnebago Counties, WI; Whiteland, Greenwood, Martinsville, Anderson, Elwood, Tipton, Peru, and Wabash to Johnson, Morgan, Madison, Tipton, Miami and Wabash Counties, IN; Williamson and Charleston to Mingo and Kanawha Counties, WV; Fort Wayne, Pendleton, Putnamville, Richmond, Plainfield, Knightstown, New Castle, Logansport, St. Meinrad to Allen, Madison, Wayne, Hendricks, Henry, Cass and Spencer Counties, IN; Manistee, St. Clair and Marysville to Manistee and St. Clair Counties, MI; Springfield and Champaign to Sangamon and Champaign Counties, IL; Libertyville to Lake County, IL; Bluffton, Elkhart, Fort Wayne, Muncie, Richmond, South Bend, Terre Haute to Wells, Elkhart, Allen, Delaware, Wayne, St. Joseph and Vigo Counties, IN; Cedar Rapids, Charles City, Clinton, Davenport, Des Moines, Dubuque, Fort Dodge, Marshalltown, Mason City and Waterloo to Linn, Floyd, Clinton, Scott, Polk, Dubuque, Marshall, Cerro Gordo, and Black Hawk Counties, IA; Covington to Kenton County, KY; Grand Rapids and Bay City to Kent and Bay Counties, MI; Dayton, Portsmouth, Zanesville, and Xenia to Montgomery, Scioto, Muskingum, and Greene Counties, OH; Carbondale, Cairo, West Frankport to Jackson, Alexander, and Franklin Counties, IL; Terre Haute, Fort Wayne, Richmond and Evansville, IN to Vigo, Allen, Wayne, and Vandenburg Counties, IN; Alexandria, Summitville, Greenwood, Whiteland, Windfall, and Morristown to Madison, Johnson and Tipton Counties, IN; Carbondale, Cairo, West Frankfort, Barrington to Jackson, Alexander, Franklin and Cook Counties, IL; St. Joseph, Benton Harbor, Niles, Buchanan, Sturgis and Three Rivers to Berrien and St. Joseph Counties, MI; Madison to Dane County, WI; Prairie du Chien to Crawford County, WI; Swedesboro to

Gloucester County, NJ; Le Sueur to Le Sueur County, MN; Cokato, Montgomery, Watertown, Winsted, Blue Earth, Winthrop, and Glencoe to Wright, Carver, McLeod, Fairbault and Sibley Counties, MN; Bowling Green to Warren County, KY; Austin to Mower County, MN; Rittman to Summit County, OH; Akron to Wayne County, OH; Silver Springs to Wyoming County, NY; Monroe City, Laclede, Chillicothe to Marion, Linn and Livingston Counties, MO; Chillicothe to Livingston County, MO; Pottstown to Montgomery County, PA; Gloucester to Essex County, MA; Cudahy to Milwaukee County, WI; Lexington to Fayette County, KY; Boonville and Moberly to Cooper and Randolph Counties, MO; Fairport to Lake County, OH; Macon, Marshall, Moberly, and Milan to Macon, Saline, Randolph, and Sullivan Counties, MO; St. Joseph to Buchanan County, MO; Waseca and Fairmont to Waseca and Martin Counties, MN; Alton and Streator to Alton and La Salle Counties, IL; Muncie, Laped and Winchester to Delaware, Madison and Randolph Counties, IN; Dunkirk to Jay County, IN; Winchester to Randolph County, IN; Clarksburg and Wheeling to Harrison and Ohio Counties, WV; Washington to Washington County, PA; Lancaster to Fairfield County, OH; South Connellsville to Fayette County, PA; Fairmont to Marion County, WV; Bloomington, Champaign, Chanute Field, Danville, Freeport, Galesburg, Petersburg, and Rockford to McLean, Champaign, Vermillion, Stephenson, Knox, Menard, and Winnebago Counties, IL; Flint, Lansing, Muskegon, Owosso, Port Huron, Saginaw and Sturgis to Genesee, Ingham, Muskegon, Shiawassee, St. Clair, Saginaw and St. Joseph Counties, MI; McKees Rocks to Allegheny County, PA; Clinton to Clinton County, IA; Duluth to St. Louis County, MN; Ft. Wayne to Allen County, IA; Onalaska to La Crosse County, WI; St. Joseph to Buchanan County, MO; Springfield to Sangamon County, IL; South Bend to St. Joseph County, IN; Terre Haute to Vigo County, IN; Evansville to Vandenburg County, IN; Escanaba to Delta County, MI; Youngstown to Mahoning County, OH; Erie to Erie County, PA; Binghamton and Conklin to Broome County, NY; (c) remove facilities limitations; (d) remove package restrictions, where applicable; (e) remove restrictions to traffic moving from, to or between various types of warehouses and facilities; (3) Sub-No. 89: (a) broaden commodity description from meats and packinghouse products, etc. to "such commodities as are dealt in by food business houses"; (b) remove

the facilities limitation; (4) Sub-No. 109: (a) broaden the commodity description from pressed wood, buffing and polishing compounds, bird seed, bird gravel, etc. to "such commodities as are dealt in by food business houses"; (b) broaden Rochester, NY to Monroe County, NY; (5) Sub-No. 115: (a) broaden the commodity description from frozen foods to "such commodities as are dealt in by food business houses"; (b) broaden Darien, WI to Walworth County, WI; (c) remove interline restrictions; (6) Sub-No. 165: (a) broaden the commodity description from corn syrup, corn starch, dextrin, etc., to "such commodities as are dealt in by food business houses"; (b) broaden Lafayette, IN to Tippecanoe County, IN; (c) remove restriction limiting service to bulk commodities; (d) remove the "originating at" restrictions; (7) Sub-No. 183: (a) broaden the commodity description from corn products, soybean products, etc. to "such commodities as are dealt in by food business houses"; (b) broaden the territory from specific facilities at Decatur, IL, to Macon County, IL; (c) remove restrictions limiting service to bulk commodities; (d) remove the "originating at" restriction; (8) Sub-No. 194: (a) broaden the commodity description from gypsum, gypsum products, asphalt and composition roofing products, insulating materials, etc. to "building and insulating materials"; (b) broaden Edgewater and Carteret, NJ, Pittston, PA, to Bergen and Middlesex Counties, NJ and Luzerne County, PA; (c) remove the facilities limitation at Philadelphia; (d) remove the "mixed loads" limitations; (9) Sub-No. 198: (a) broaden commodity description from animal and vegetable oils and products, etc. to "such commodities as are dealt in by food business houses"; (b) remove the facilities limitation located Will County with Will County, IL; (c) remove restrictions limiting service to bulk commodities; (d) remove the "origination at or destined to" restrictions; (10) Sub-No. E217: (a) broaden the commodity description from gypsum and gypsum products, asphalt and composition roofing products, etc. to "building and insulating materials"; (b) remove the "in bulk" restrictions; (11) Sub-No. E241: (a) broaden the commodity description from asphalt, boards, caps, cement, clamps, etc. to "building and insulating materials"; (b) broaden Chicago Heights, IL to Cook County, IL; In each of the above numbered certificates replace existing one-way authority with radial authority between numerous points throughout the United States.



MC 123279 (Sub-8)X, filed May 29, 1981, and published in the *Federal Register* June 16, 1981, republished as corrected this issue. Applicant: CHARTER EXPRESS, INC., 8418 Tallmadge Rd., R.D. No. 6, Ravenna, OH 44266. Representative: William P. Jackson, Jr., P.O. Box 1240, Arlington, VA 22210. Applicant seeks to remove restrictions in its Sub-Nos. 3F and 5F certificates to (1) broaden its commodity description from paper and paper products, to "pulp, paper and related products", in Sub-No. 3F; (2) replace its facilities with city or county-wide authority: in Sub-No. 3F, facilities at or near Boston, MA with Boston, MA; and in Sub-No. 5F, facilities at or near Northampton, Wadsworth, and West Salem, OH, with Summit, Medina and Wayne Counties, OH; and (3) change one-way to radial authority between Boston, MA, and points in OH, MI, IN, IL, and WI, in Sub-No. 3F. The purpose of this republication is to substitute Summit County for Clark County, as previously published.

MC 133324 (Sub-8)X, filed June 22, 1981, previously published in the *Federal Register* of July 20, 1981, republished as corrected this issue. Applicant: CAR CARRIERS, INC., 13101 South Torrence Avenue, Chicago, IL 60633. Representative: William D. Brejcha, 10 South LaSalle Street, Suite 1600, Chicago, IL 60603. Applicant seeks to remove restrictions in its lead and Sub-Nos. 4F and 6F, certificates: (A) to broaden the commodity description to (1) "transportation equipment" from new automobiles, new trucks, and new chassis, in initial movements, in truckaway service, automobiles, trucks, and chassis, new and used, unfinished, and/or wrecked, in subsequent or secondary movements, in truckaway service, new automobiles, trucks, chassis, commercial automotive vehicles, and unfinished automotive vehicles, in initial movements, in truckaway service, and new automotive vehicles, chassis, and automobile show equipment, displays, and advertising matter when moving with these commodities, in initial movements, in truckaway service, in paragraphs 1, 2, 4, 9 and 10 of its lead; (2) "transportation equipment and machinery" from automobiles, trucks, tractors, chassis, and commercial automotive vehicle, new, used, unfinished, and wrecked in subsequent or secondary movements, in driveaway service, new automobiles, new trucks, new tractors (except farm tractors), new chassis and parts therefor, when moving with these commodities, and automobile show displays, when moving with display

vehicles in initial movements, in truckaway service, and new bodies and parts therefor when moving with new bodies and automobile show displays when moving with display bodies, automobiles, chassis, station wagons, trucks, and truck tractors, in initial movements, in truckaway service, and automobiles, trucks, truck tractors, and chassis in initial movements, in truckaway service in paragraphs 3, 5, 6, 7, 8, and 11 of its lead; (3) to "machinery" from farm and industrial tractors in paragraph 12 of its lead; (4) "transportation equipment" from new automobiles, in initial movements, in truckaway service in its Sub-No. 4F; (5) "transportation equipment" from motor vehicles, in initial movements in its Sub-No. 6F; (B) to remove the restrictions: (1) against applicant's interline operations with either Automobile Carriers, Inc. or C & J Commercial Driveaway, Inc. "by a coupling of the initial movement rights of one with the secondary movement rights of the other for through transportation of traffic under such combination" in paragraphs 1-12 of its lead, (2) limiting service "from places of manufacture and assembly" in paragraphs 1 and 4 of its lead; (3) limiting service to named facilities, including railheads, in paragraphs 1, 2, 3, 9, 10, and 11 of its lead; (4) against the transportation of platform, warehouse, and lift trucks in paragraph 11 of its lead; (5) limiting service to the transportation of traffic having a prior movement by rail or water to Chicago, IL in paragraph 12 of its lead; (6) limiting service to movements "in mixed loads with motor vehicles otherwise authorized" in paragraph 12 of its lead, (7) prohibiting service from Cook County, IL to Memphis, TN in paragraph 11 of its lead; and (8) against transportation of "trailers" and against service to AL and HI in its Sub-No. 6F; (C) to replace the one-way operations authorized paragraphs 1-12 of its lead of its lead and Sub-Nos. 4F and 6F with radial authority; (D) to broaden the territorial scope to county wide authority: (1) replace Omaha, NE, with Douglas and Sarpy Counties, NE in paragraph 1a of its lead; (2) replace Indianapolis, IN with Marion County, IN in paragraph 1b of its lead; (3) replace Hegewisch, IL with Chicago, IL in paragraphs 5 and 7 of its lead; (4) replace Wixom, MI with Oakland County, MI in its Sub-No. 4F; and (5) replace Battle Creek, MI with Calhoun County, MI in its Sub-No. 6F. The purpose of this republication is to correct the carrier's ZIP code address and in part D(3) to replace Hegewisch, IL with Chicago, IL, inasmuch as

Hegewisch is within the city limits of Chicago.

MC 150328 (Sub-2)X, filed July 27, 1981. Applicant: SHAFER TRUCKING CO., INC., 4726 Ball Camp Pike, Knoxville, TN 37921. Representative: Henry E. Seaton, 929 Pennsylvania Bldg., 425 13th St., N.W., Washington, DC 20004. Applicant seeks to remove restrictions in its Sub-No. 1F certificate to (A) broaden the commodity description from part (1) concrete pipes, conduits and manholes, and part (2) materials used in the installation of pipes and conduits, to "commodities which because of size or weight require the use of special equipment and clay, concrete, glass or stone products"; (B) replace named facilities at or near Knoxville, TN, with county-wide authority in Knox County, TN and (C) replace one way with radial authority between Knox County, TN, and points in GA, KY, NC, SC, TN, VA and WV.

[FR Doc. 81-23790 Filed 6-13-81; 8:45 am]

BILLING CODE 7035-01-M

## INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

### Agency for International Development

#### Regulatory Flexibility Act; Plan for Periodic Review of Regulations

**AGENCY:** Agency for International Development.

**ACTION:** Plan for periodic review of regulations.

**SUMMARY:** The Regulatory Flexibility Act requires that each government agency review existing and proposed regulations that have a significant economic impact on a substantial number of small entities, such as small businesses, small organizations, and small governmental jurisdictions. This notice is to meet the Act's requirement that a plan be published for the review of existing Agency regulations.

**DATE:** Comments solicited in this plan are due by September 14, 1981.

**ADDRESS:** Comments should be submitted to the following address: Mr. Joseph R. Ellis, Room 113, SA-8, Office of Management Planning, Agency for International Development, Washington, D.C. 20523.

**FOR FURTHER INFORMATION CONTACT:** Joseph R. Ellis at (202) 235-2386.

**SUPPLEMENTARY INFORMATION:** The Regulatory Flexibility Act (RFA) Pub. L. 96-354 codified at 5 U.S.C. 601 et seq., requires that Federal agencies take into account how their regulations affect "small entities," including small



businesses, small organizations, and small governmental jurisdictions. The Act's basic purpose is to establish as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation.

Section 610 of the Act requires each agency to publish in the Federal Register a plan for the periodic review of existing rules issued by the Agency which have or will have a significant economic impact on a substantial number of small entities. The plan must provide for the review of all such agency rules existing on January 1, 1981, within ten years. Such rules adopted after January 1, 1981, must be reviewed within ten years of their publication as final rules.

The purpose of the periodic reviews of regulations is to determine whether such rules should be continued without change, or should be amended or rescinded, to minimize any significant economic impact of the rules upon a substantial number of small businesses, small organizations, or small governmental jurisdictions.

AID has screened its existing regulations and has tentatively concluded that none of its regulations causes significant economic impact on a substantial number of small entities. However, the Agency invites and welcomes comments and suggestions from the public with respect to this conclusion. If any member of the public believes that any specific existing regulations have a significant impact on a substantial number of small entities, we would appreciate receiving appropriate comments. Comments should be provided in the following format:

#### TITLE OF REGULATION:

Code of Federal Regulation (CFR) citation.

Description of economic effects on small entities, especially on the commenting person or organization.

#### RECOMMENDATIONS FOR CHANGES:

When AID promulgates new regulations for which it prepares an initial regulatory Flexibility Analysis, it will indicate in the preamble to the final regulation when the regulation will be subsequently reviewed within ten years.

The Agency may decide to amend this plan for review of regulations under the Regulatory Flexibility Act after the receipt of relevant public comments.

Dated: July 31, 1981.

Hugh L. Dwelley,

Acting Assistant Administrator for Program and Management Services.

[FR Doc. 81-23833 Filed 8-13-81; 8:45 am]

BILLING CODE 4710-02-M

## DEPARTMENT OF JUSTICE

### Office of the Attorney General

[Order No. 953-81]

#### Order Instituting Hearing on Application of Seattle Times Co. and Hearst Corp. for Approval of Joint Operating Arrangement

Pursuant to the Newspaper Preservation Act, 15 U.S.C. 1801 *et seq.*, and the Department of Justice regulations promulgated thereunder (28 CFR Part 48), The Hearst Corporation, publisher of the Seattle Post-Intelligencer, and the Seattle Times Company (the "Applicants"), filed with the Attorney General an Application for Approval of a Joint Operating Arrangement on March 27, 1981.

On May 29, 1981 the Assistant Attorney General for the Antitrust Division, after review of documents and information provided by the Applicants, submitted a Report to the Attorney General which identified "material issues of fact" raised by the Application and requested that a hearing be convened before an administrative law judge to resolve these material issues.

In reply comments to the Report of the Assistant Attorney General, the Applicants have requested that I decide this matter without a hearing on the grounds that no material issues of fact are presented by the Application, and that a protracted factual hearing would have a devastatingly negative effect on the competitive prospects of the Seattle Post-Intelligencer.

The public record reveals that some 200 other submissions have been filed by interested persons, virtually all of which request that a hearing be convened to explore important issues of fact.

The Newspaper Preservation Act provides that the Attorney General shall grant prior written consent and thus a limited antitrust exemption to a proposed joint operating arrangement if, based upon the entire record, the Attorney General finds that not more than one of the applicants is other than a failing newspaper, and that approval would effectuate the policy and purpose of the Act. 15 U.S.C. 1803(b).

I recognize the important policy considerations which undergird the Newspaper Preservation Act. On the

other hand, I am required to make specific findings of fact and law and cannot, based upon the current factual record, determine whether approval or disapproval of the instant application would be consonant with the letter and spirit of the Newspaper Preservation Act. I therefore find that a hearing is necessary to resolve the factual issues raised in the Report of the Antitrust Division.

In view of the potential costs of protracted hearings, however, and in view of the fact that a substantial portion of the record for decision has already been developed, I further find that the necessary presentation of witnesses and review of the evidence by an administrative law judge should be completed expeditiously. Accordingly, I intend to grant few petitions to intervene pursuant to 28 CFR 48.11. I urge groups of persons with common interests in these proceedings such as: (1) elected officials, (2) employees and (3) advertisers and competitors, each to select a collective representative to apply for intervention as a party to the hearing. The hearing will be public, and any person alleging a genuine interest in the outcome of the proceeding may file proposed findings of fact and conclusions of law in such manner as the administrative law judge may direct.

In view of the foregoing, pursuant to 28 CFR 48.8(c) I hereby order that:

1. A hearing on the instant Application of the Seattle Times Company and The Hearst Corporation be held in the City of Seattle, Washington, in accordance with 28 CFR 48.10;

2. The hearing record be closed within 60 days after the appointment of an administrative law judge by the Assistant Attorney General for Administration;

3. Within 20 days after the close of the hearing record, the administrative law judge issue a recommended decision supported by findings of fact and conclusions of law responsive to the following issues:

a. Whether the Seattle Post-Intelligencer is a "failing newspaper" within the meaning of 15 U.S.C. 1803(b); and

b. Whether approval of the proposed joint operating arrangement would effectuate the policy and purpose of the Newspaper Preservation Act.

Dated: August 7, 1981.

William French Smith,  
Attorney General.

[FR Doc. 81-23852 Filed 8-13-81; 8:45 am]

BILLING CODE 4410-01-M



## DEPARTMENT OF LABOR

## Employment and Training Administration

## Allied Corp., et al.; Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221 (a) of the Act and 29 CFR 90.12.

The purpose of each of the investigations is to determine whether absolute or relative increases of imports of articles like or directly competitive

with articles produced by the workers' firm or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision.

Petitioners meeting these eligibility requirements will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

Pursuant to 29 CFR 90.13, the petitioners or any other persons showing a substantial interest in the subject

matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 24, 1981.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 24, 1981.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, N.W., Washington D.C. 20213.

Signed at Washington, D.C. this 31st day of July 1981.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

## Appendix

| Petitioner: Union/workers or former workers of—      | Location            | Date received | Date of petition | Petition No. | Articles produced                                          |
|------------------------------------------------------|---------------------|---------------|------------------|--------------|------------------------------------------------------------|
| Allied Corp., Automotive Products Division (workers) | Greenville, Ala.    | 7/24/81       | 7/17/81          | TA-W-12,862  | Seatbelts for Ford autos and trucks.                       |
| Anita Foundations Inc. (ILGWU)                       | New York, N.Y.      | 7/30/81       | 7/20/81          | TA-W-12,863  | Brassiers and halters.                                     |
| Aurora Undergarments Company, Inc. (ILGWU)           | Brooklyn, N.Y.      | 7/30/81       | 7/20/81          | TA-W-12,864  | Panties.                                                   |
| Bakers Park Mining & Milling (workers)               | Silverton, Colo.    | 7/30/81       | 7/23/81          | TA-W-12,865  | Lead, zinc, gold, silver, and copper concentrates.         |
| Chester County Sportswear (company)                  | Henderson, Tenn.    | 7/30/81       | 7/24/81          | TA-W-12,866  | Children's jeans and sportswear.                           |
| Glen Maid Lingerie, Inc. (ILGWU)                     | North Troy, N.Y.    | 6/29/81       | 6/19/81          | TA-W-12,867  | Ladies' lingerie and sleepwear.                            |
| I.P.M. Development Engineering (workers)             | St. Joseph, Mich.   | 7/14/81       | 7/8/81           | TA-W-12,868  | High fidelity turntables.                                  |
| Reproduction Technologies, Inc. (company)            | Elkhart, Ind.       | 7/30/81       | 7/22/81          | TA-W-12,869  | Magnetic tape recorders, audio and data recorders.         |
| Roller Bearing Co. of America (UAW)                  | Aiken, S.C.         | 7/14/81       | 7/6/81           | TA-W-12,870  | Roller bearings, bushings, and tolerance rings.            |
| Roller Bearing Co. of America (UAW)                  | Trenton, N.J.       | 7/14/81       | 7/6/81           | TA-W-12,871  | Roller bearings, bushings, and tolerance rings.            |
| Roller Bearing Co. of America (UAW)                  | Hartsville, S.C.    | 7/14/81       | 7/6/81           | TA-W-12,872  | Roller bearings, bushings, and tolerance rings.            |
| Salant & Salant (company)                            | Loretto, Tenn.      | 7/30/81       | 7/24/81          | TA-W-12,873  | Basic jeans.                                               |
| Salant & Salant (company)                            | Lawrenceburg, Tenn. | 7/30/81       | 7/24/81          | TA-W-12,874  | Men's shirts and women's blouses.                          |
| Salant & Salant (company)                            | Henderson, Tenn.    | 7/30/81       | 7/24/81          | TA-W-12,875  | Basic jeans.                                               |
| Salant & Salant (company)                            | Jackson, Tenn.      | 7/30/81       | 7/24/81          | TA-W-12,876  | Jeans warehouse.                                           |
| Royal Park, Inc.                                     | Borger, Tex.        | 7/29/81       | 7/22/81          | TA-W-12,877  | Jackets, vests and skirts for women.                       |
| Crompton & Knowles Corp. (company)                   | Charlotte, N.C.     | 7/31/81       | 7/22/81          | TA-W-12,878  | Broad weaving looms, narrow fabric looms and repair parts. |
| Crompton & Knowles Corp. (company)                   | Burlington, N.C.    | 7/31/81       | 7/22/81          | TA-W-12,879  | Broad weaving looms, narrow fabric looms and repair parts. |
| Crompton & Knowles Corp. (company)                   | Mooresville, N.C.   | 7/31/81       | 7/22/81          | TA-W-12,880  | Broad weaving looms, narrow fabric looms and repair parts. |
| Jafree Shirt Company, Inc. (company)                 | Wytheville, Va.     | 7/31/81       | 7/22/81          | TA-W-12,881  | Men's shirts and ladies' blouses, dresses and sportswear.  |
| GTE Products Corp. (workers)                         | Montoursville, Pa.  | 7/31/81       | 7/22/81          | TA-W-12,882  | Photo flash products.                                      |
| GTE Products Corp. (workers)                         | Dyersburg, Tenn.    | 7/31/81       | 7/24/81          | TA-W-12,883  | Photo flash products.                                      |

[FR Doc. 81-23807 Filed 8-13-81; 8:45 am]

BILLING CODE 4510-28-M

## Armstrong Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221 (a) of the Act and 29 CFR 90.12.

The purpose of each of the investigations is to determine whether

absolute or relative increases of imports of articles like or directly competitive with articles produced by the workers' firm or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision.

Petitioners meeting these eligibility requirements will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of

Subpart B of 29 CFR Part 90. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

Pursuant to 29 CFR 90.13, the petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 24, 1981.



Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 24, 1981.

The petitions filed in this case are

available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, N.W., Washington, D.C. 20213.

Signed at Washington, D.C. this 10th day of August, 1981.

Harold A. Brait,

Acting Director, Office of Trade Adjustment Assistance.

#### Appendix

| Petitioner: Union/workers or former workers of— | Location                      | Date received | Date of petition | Petition No. | Articles produced                                                          |
|-------------------------------------------------|-------------------------------|---------------|------------------|--------------|----------------------------------------------------------------------------|
| (The) Armstrong Rubber Co. (UAW)                | Madison, Tenn.                | 8/3/81        | 7/28/81          | TA-W-12,884  | Passenger car size tires.                                                  |
| Avanti Co. (workers)                            | Wyandotte, Mich.              | 7/31/81       | 7/23/81          | TA-W-12,885  | Fasteners.                                                                 |
| DuQuoin Packing Co. (workers)                   | DuQuoin, Ill.                 | 8/3/81        | 7/27/81          | TA-W-12,886  | Slaughter, sell and distribute beef and pork, processed by-products items. |
| James Textile Corp. (company)                   | North Bergen, N.J.            | 8/3/81        | 7/28/81          | TA-W-12,887  | Women's knitwear.                                                          |
| L. Mazzuca Buick (workers)                      | St. Louis, Mo.                | 7/30/81       | 7/22/81          | TA-W-12,888  | Auto Dealership.                                                           |
| Midway Snake Co. (workers)                      | Tillamook, Oreg.              | 8/4/81        | 7/26/81          | TA-W-12,889  | Shakes and shingles for roofing.                                           |
| Penbee Manufacturing Corp. (company)            | Lumberton, N.C.               | 8/3/81        | 7/28/81          | TA-W-12,890  | Women's knitwear.                                                          |
| Lancaster Glass Corp. (workers)                 | Lancaster, Ohio (W. Main St.) | 8/5/81        | 7/30/81          | TA-W-12,891  | Components for electronic tubes.                                           |
| Lancaster Glass Corp. (workers)                 | Lancaster, Ohio (South Ewing) | 8/5/81        | 7/30/81          | TA-W-12,892  | Assemblies component parts.                                                |
| Hide-Away Creations, Ltd. (ILGWU)               | New York, N.Y.                | 7/24/81       | 7/20/81          | TA-W-12,893  | Ladies' leather jackets and car coats.                                     |

[PR Doc. 81-23806 Filed 8-13-81; 8:45 am]

BILLING CODE 4510-28-M

#### [TA-W-9741]

##### **Bridon American Corp. Kingston, Pennsylvania; Termination of Investigation**

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on August 4, 1980 in response to a worker petition received on July 31, 1980 which was filed on behalf of the workers at Bridon American Corporation, Kingston, Pennsylvania.

The petitioner has requested that the petition be withdrawn. Consequently further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed in Washington, D.C. this 3rd day of August 1981.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[PR Doc. 81-23804 Filed 8-13-81; 8:45 am]

BILLING CODE 4510-28-M

#### [TA-W-10,413]

##### **Bridon American Corp., Exeter, Pennsylvania; Termination of Investigation**

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on August 25, 1980 in response to a worker petition received on August 15, 1980 which was filed on behalf of the workers at Bridon American Corporation, Exeter, Pennsylvania.

The petitioner has requested that the petition be withdrawn. Consequently further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed in Washington, D.C. this 3rd day of August 1981.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[PR Doc. 81-23803 Filed 8-13-81; 8:45 am]

BILLING CODE 4510-28-M

#### [TA-W-10,311]

##### **J&S Investments, Inc., South Holland, Illinois; Termination of Investigation**

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on August 18, 1980 in response to a worker petition received on August 11, 1980 which was filed on behalf of the workers of J&S Investments, Incorporated, South Holland, Illinois.

The petitioner has requested that the petition be withdrawn. Consequently further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed in Washington, D.C. this 3rd day of August 1981.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[PR Doc. 81-23802 Filed 8-13-81; 8:45 am]

BILLING CODE 4510-28-M

#### [TA-W-9673]

##### **Michigan Plating and Stamping, Grand Rapids, Michigan; Affirmative Determination Regarding Application for Reconsideration**

On June 9, 1981 the Department issued a negative determination regarding eligibility to apply for worker adjustment assistance for workers of Michigan Plating and Stamping, Grand Rapids, Michigan. The denial was published in the *Federal Register* on June 23, 1981 (46 FR 32528).

Subsequently, the workers petitioned the United States Court of International Trade in New York City for review of the denial, based largely on alleged competitive bumper imports from Canada which reportedly displaced production at the Grand Rapids plant.

#### Conclusion

Under the circumstances and on its own motion, the Department of Labor agrees to grant administrative reconsideration. Signed at Washington, D.C. this 6th day of August 1981.

Bert Lewis,

Administrator, Unemployment Insurance Service.

[PR Doc. 81-23805 Filed 8-13-81; 8:45 am]

BILLING CODE 4510-28-M



[TA-W-11,199]

**Patton Shirt Manufacturing Co., Inc.; Termination of Investigation**

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on October 6, 1980 in response to a worker petition received on September 23, 1980 which was filed by the United Garment Workers of America on behalf of workers at Patton Shirt Manufacturing Company, Incorporated, Patton, Pennsylvania.

All workers were separated from the subject firm more than one year prior to the date of the petition. Section 223 of the Act specifies that no certification may apply to any worker whose last separation occurred more than one year before the date of the petition. Consequently further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C., this 3d day of August 1981.

Marvin M. Fooks,  
Director, Office of Trade Adjustment Assistance.

[FR Doc. 81-23809 Filed 8-13-81; 8:45 am]

BILLING CODE 4510-26-M

[TA-W-12,056]

**Town and Country Shoes, Inc., Sedalia, Missouri; Termination of Investigation**

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on January 12, 1981 in response to a worker petition received on January 5, 1981 which was filed on behalf of the workers at Town and Country Shoes, Incorporated, Sedalia, Missouri.

The petitioning group of workers are subject to an ongoing investigation for which a determination has not yet been issued (TA-W-11,143). Consequently further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed in Washington, D.C. this 3rd day of August 1981.

Marvin M. Fooks,  
Director, Office of Trade Adjustment Assistance.

[FR Doc. 81-23805 Filed 8-13-81; 8:45 am]

BILLING CODE 4510-26-M

**Mine Safety and Health Administration**

[Docket No. M-81-153-C]

**Badger Coal Co.; Petition for Modification of Application of Mandatory Safety Standard**

Badger Coal Company, P.O. Box 456, Philippi, West Virginia 26416 has filed a

petition to modify the application of 30 CFR 49.6(a)(1) (equipment and maintenance requirements; mine rescue teams) to its Badger No. 14 and No. 15 Mines, Boulder Mine, Grand Badger No. 1 and No. 1A Mines, all located throughout the state of West Virginia. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that each mine rescue station be equipped with twelve self-contained oxygen breathing apparatus, each with a minimum of two hours capacity (approved under Subpart H of part 11 of this title) and any necessary equipment for testing such breathing apparatus.

2. As an alternative method, petitioner proposes to supply six self-contained oxygen breathing apparatus to equip its mine rescue team. In support of this proposed alternative, petitioner states that:

a. One fully equipped mine rescue team exists at the mine and arrangements exist for a second team to be available at all times when miners are underground. This back-up team is located no more than two hours travel time from the mine rescue station;

b. The second team will be fully equipped with self-contained oxygen breathing apparatus and required accessories which they will provide themselves.

3. Petitioner states that the proposed alternative method will provide the same degree of safety for the miners affected as that afforded by the standard.

**Request for Comments**

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 827, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in the office on or before September 14, 1981. Copies of the petition are available for inspection at that address.

Dated: August 6, 1981.

Patricia W. Silvey,  
Acting Director, Office of Standards,  
Regulations and Variances.

[FR Doc. 81-23800 Filed 8-13-81; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-81-147-C]

**Beckley Coal Mining Co.; Petition for Modification of Application of Mandatory Safety Standard**

Beckley Coal Mining Company, P.O. Box 145, Glen Daniel, West Virginia 25844 has filed a petition to modify the application of 30 CFR 49.6(a)(1) (equipment and maintenance requirements; mine rescue teams) to its Beckley Mine located in Raleigh County, West Virginia. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that each mine rescue station be equipped with twelve self-contained oxygen breathing apparatus, each with a minimum of two hours capacity (approved under Subpart H of Part 11 of this title) and any necessary equipment for testing such breathing apparatus.

2. As an alternative method, petitioner proposes to provide nine self-contained oxygen breathing apparatus at its mine rescue station in conjunction with the availability of the back-up rescue team of Maple Meadow Mining Company.

3. In support of this alternative method, petitioner states that:

a. The mine rescue team consists of six members;

b. West Virginia state code requires that the first mine rescue team cannot enter the mine until one six-member back-up team is stationed at the mine portal;

c. Maple Meadow Mining Company operates a mine 7.9 miles from petitioner's mine and that company maintains a mine rescue team with six self-contained oxygen breathing apparatus; travel time between the two mines is twelve minutes; and

d. Twenty-four hour a day communication can be established between the two companies.

4. Petitioner states that the alternative method outlined above will provide the same measure of safety to the miners affected as that afforded by the standard.

**Request for Comments**

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 827, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 14, 1981. Copies of the



petition are available for inspection at that address.

Dated: August 6, 1981.

Patricia W. Silvey,

*Acting Director, Office of Standards, Regulations and Variances.*

[FR Doc. 81-23798 Filed 8-13-81; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-81-151-C]

**Consolidation Coal Co.; Petition for Modification of Application of Mandatory Safety Standard**

Consolidation Coal Company, Consol Plaza, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Humphrey No. 7 mine located in Monongalia County, West Virginia. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that return air courses be examined in their entirety on a weekly basis.

2. Adverse roof conditions have rendered several air courses virtually impassable.

3. As an alternative method, petitioner proposes to establish and maintain specified air monitoring stations and record the results of the weekly methane and air readings in a date book at each location.

4. Petitioner states that this alternative method will provide the same degree of safety to the miners affected as that afforded by the standard.

**Request for Comments**

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 14, 1981. Copies of the petition are available for inspection at that address.

Dated: August 6, 1981.

Patricia W. Silvey,

*Acting Director, Office of Standards, Regulations and Variances.*

[FR Doc. 81-23801 Filed 8-13-81; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-81-138-C]

**Red Hawk Coal Corp.; Petition for Modification of Application of Mandatory Safety Standard**

Red Hawk Coal Corporation, P.O. Box 2237, Williamson, West Virginia 25661 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its No. 1 Mine located in Pike County, Kentucky. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's haulage equipment and roof bolting machine.

2. The coal seam ranges from 38 to 50 inches in height with consistent ascending and descending grades creating dips in the coalbed.

3. Installation of canopies on the equipment in this mining height causes a cramped operator compartment which hampers the equipment operator's visibility, increasing the chances of an accident. In addition, the canopies may strike the roof, possibly destroying roof support.

4. For these reasons, petitioner requests a modification of the standard.

**Request for Comments**

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 14, 1981. Copies of the petition are available for inspection at that address.

Dated: August 6, 1981.

Patricia W. Silvey,

*Acting Director, Office of Standards, Regulations and Variances.*

[FR Doc. 81-23797 Filed 8-13-81; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-81-149-C]

**Southern Ohio Coal Co.; Petition for Modification of Application of Mandatory Safety Standard**

Southern Ohio Coal Company, P.O. Box 490, Athens, Ohio 45701 has filed a petition to modify the application of 30 CFR 49.6(a)(1) (equipment and maintenance requirements; mine rescue teams) to its Meigs No. 1 and No. 2 and Raccoon No. 3 Mines located throughout the state of Ohio the petition is filed

under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that each mine rescue station be equipped with twelve self-contained oxygen breathing apparatus, each with a minimum of two hours capacity (approved under Subpart H of Part 11 of this title) and any necessary equipment for testing such breathing apparatus.

2. As an alternative method, petitioner proposes to provide, at each of its three mine sites, a separate rescue station (each of which is in less than one hour travel time of each other) which would be fully equipped in accordance with 30 CFR 49.6 except that each station would have seven apparatus instead of twelve.

3. In support of this proposed alternative method, petitioner states that the placing of seven apparatus at locations immediately accessible to each of its three mines, thus providing instant availability of one team's apparatus and quick back-up availability of apparatus for two more teams, provides no less protection than application of the standard.

4. For these reasons, petitioner requests a modification of the standard.

**Request for Comments**

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 14, 1981. Copies of the petition are available for inspection at that address.

Dated: August 6, 1981.

Patricia W. Silvey,

*Acting Director, Office of Standards, Regulations and Variances.*

[FR Doc. 81-23799 Filed 8-13-81; 8:45 am]

BILLING CODE 4510-43-M

**Office of Secretary**

**Steering Subcommittee of the Labor Advisory Committee for Trade Negotiations and Trade Policy; Meeting**

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-462 as amended), notice is hereby given of a meeting of the Steering Subcommittee of the Labor Advisory



Committee for Trade Negotiations and Trade Policy.

**DATE, TIME AND PLACE:**

September 1, 1981, 10:00 a.m., C5320 Seminar Room 8, Frances Perkins, Department of Labor Building, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

**PURPOSE:** To discuss trade negotiations and trade policy of the United States.

This meeting will be closed under the authority of Section 10(d) of the Federal Advisory Committee Act. The Committee will hear and discuss sensitive and confidential matters concerning U.S. trade negotiations and trade policy.

**FOR FURTHER INFORMATION CONTACT:**

Meyer Bernstein, Executive Secretary, Labor Advisory Committee, Phone: (202) 523-6565, August 5, 1981.

Signed at Washington, D.C. this 5th day of August, 1981.

Robert W. Searby,

Deputy Under Secretary of International Affairs.

[FR Doc. 81-23796 Filed 8-13-81; 8:45 am]

BILLING CODE 4570-28-M

**NUCLEAR REGULATORY COMMISSION**

[Docket No. 50-471]

**Boston Edison Co., et al. (Pilgrim Nuclear Power Station, Unit 2); Order**

August 10, 1981.

Oral argument on the appeals of the Commonwealth of Massachusetts, Alan R. and Marion W. Cleeton, and the Massachusetts Wildlife Federation from the February 2, 1981, partial initial decision of the Licensing Board will be heard at 9:30 a.m. on Tuesday, September 1, 1981, in the NRC Public Hearing Room, Fifth Floor, East-West Towers Building, 4350 East-West Highway, Bethesda, Maryland. Each side is allotted a total of 60 minutes.<sup>1</sup> The parties are to allocate this time among themselves in accordance with the number and weight of the issues each has raised and briefed. The parties should avoid duplicate presentation of arguments they share in common. All parties are also reminded that the members of the Appeal Board will be familiar with the decision below and the briefs, thus making lengthy background statements unnecessary.

Each party is to notify the Secretary to this Board by telephone (301-492-7662), no later than Friday, August 28, 1981, of

the name of the person who will present argument on its behalf and of the amount of time allocated to that individual for argument.

It is so ordered.

For the Appeal Board.

C. Jean Bishop,

Secretary to the Appeal Board.

[FR Doc. 81-23792 Filed 8-13-81; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-514 CP and 50-515 CP]

**Portland General Electric Co. et al. (Pebble Springs Nuclear Plant, Units 1 and 2); Order Adjusting the Schedule and Relative to the Appendix I Issue**

August 10, 1981.

The Board's order of June 19, 1981, set forth a discovery and hearing schedule for the early site review. Since then it has come to our attention that Item 8, Prehearing Conference on October 8, 1981, falls on a religious holiday. The schedule is adjusted as follows:<sup>1</sup>

6. Prehearing Conference—Wednesday, October 14, 1981.

7. All testimony Filed—Tuesday, November 3, 1981.

8. Commence Hearings—Tuesday, December 1, 1981.

There has been an open issue since the last prehearing conference in December 1979. Tr. 31 (correctly Tr. 5684). The Staff asked if the Board was satisfied with the proposed Staff testimony concerning Appendix I. The testimony was filed on March 7, 1979, but the Board had not received it at the time of the prehearing conference. It was served again by the Staff on December 28, 1979.

The Board has reviewed the testimony, is satisfied and has no further questions. It is not necessary for the Staff to present witnesses at the hearing on this issue but the testimony should be in affidavit form.

It is so ordered.

For the Atomic Safety and Licensing Board.  
Bethesda, Maryland,  
August 10, 1981.

Elizabeth S. Bowers,

Chairman, Administrative Judge.

[FR Doc. 81-23794 Filed 8-13-81; 8:45 am]

BILLING CODE 7590-01-M

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-18018; File Nos. SR-Amex-81-10 and SR-Phlx-81-8]

**American Stock Exchange, Inc. and the Philadelphia Stock Exchange, Inc.; Proposal Rule Change Relating to Options Rotations**

Comments requested on or before September 4, 1981.

Pursuant to section 19(b)(1) of the securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on July 23, 1981, the American Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below; which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The American Stock Exchange, Inc. ("Amex") proposes to amend Amex Rule 1, Commentary .02 relating to the hours of business of Amex, and thereby extend the hours of business for options transactions in certain instances. The text of the proposed amendment is set forth below. Italics indicate new material, brackets [ ] indicate material to be deleted.

**Hours of Business**

Rule 1—No change

Commentary .01—No change

Commentary .02—Options trading after 4:10 p.m.—The Board has determined that no option series shall freely trade after 4:10 p.m. However, [O] one trading rotation in any class of options contracts may be [completed] effected even though [completion] employment of the rotation will result in the effecting of transactions on the Exchange after 4:10 p.m., provided:

(1) Trading in the underlying security opens or reopens after [3:45] 3:30 p.m. (N.Y. time); and promptly thereafter, [and before 4:10 p.m., (N.Y. time)], the Exchange commences an opening or re-opening rotation in the corresponding options; or

(2) Such rotation was initiated due to unusual market conditions pursuant to Rule 917, and (i) notice of such rotation is publicly disseminated no later than the commencement of the rotation or 4:00 p.m. (N.Y. time), whichever is earlier; or (ii) notice of such rotation is publicly disseminated after 4:00 p.m. but

<sup>1</sup>For oral argument purposes, the Commonwealth, the Cleetons, and MWF are one side; the applicants and the NRC staff are the other.

<sup>1</sup>The revised schedule has been informally agreed to by the parties.



before 4:10 p.m., and the rotation does not commence until ten minutes after news of such rotation is publicly disseminated.

(3) No change.

If prior to 4:10 p.m., a trading rotation is in progress and a Senior Floor Official and a Floor Official determine that a final trading rotation is needed to assure a fair and orderly market, the rotation in progress shall be halted and such final rotation begun as promptly as possible after 4:10 p.m. Any trading rotation commenced after 4:10 p.m. must be approved by a Senior Floor Official and a Floor Official.

The Philadelphia Stock Exchange, Inc. ("Phlx") proposes to amend Phlx Rule 101, Commentary .01, in an identical manner.

## II. Amex and Phlx Statements of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

Amex submitted the following statement of purpose and basis. Presently, Amex Rule 1 provides that options trading may not take place after 4:10 p.m., except as otherwise determined by the Board of Governors. Commentary .02 to Rule 1 provides that when the underlying security does not open by 3:45 p.m., (25 minutes before the close of the options market), or when unusual market conditions exist, one trading rotation may be commenced which could result in trading after 4:10 p.m. Under the current rule, free trading is not permitted after 4:10 p.m., nor is initiation of a rotation after 4:10 p.m.

To conform Amex Rule 1 to a recent rule change by the CBOE (See SR-CBOE-1980-20), the Amex proposes to amend Commentary .02 to alter the time deadlines for determining if a trading rotation which might extend past 4:10 p.m. is warranted, and to permit rotations to be initiated after 4:10 p.m. under certain limited circumstances.

First, it is proposed that a rotation be permitted to extend past 4:10 p.m. if trading in the underlying security opens or reopens after 3:30 p.m. (instead of the current 3:45 p.m. deadline). It has been found that the high activity which generally accompanies delayed openings or reopenings after 3:45 p.m., necessitating a rotation extending past 4:10 p.m., is also present when underlying securities open or reopen after 3:30 p.m. Therefore, additional time is needed in connection with these rotations.

Secondly, it is proposed that when unusual market conditions exist, and Amex determines the need for and announces a rotation after 4:00 p.m. (but

before 4:10 p.m.), a trading rotation may begin after, or extend beyond, 4:10 p.m. However, under such circumstances, Amex will be required to allow ten minutes for news of the upcoming rotation to be disseminated. Amex will halt all trading in the option during the ten minute dissemination period. In addition, since the initiation of a rotation after 4:10 p.m. should occur only under highly unusual circumstances, this proposal requires that a Floor Governor and a Floor Official determine that such trading rotation should be employed.

Amex will continue its policy of making appropriate announcements, both verbal and on the electric message board on the Trading Floor, and requesting members to advise their trading departments of any rotation which will extend past or begin after 4:10 p.m. In addition, Amex will disseminate notice of such action on Tape B of the Consolidated Tape Association.

The proposed rule changes are consistent with the requirements of the Securities Exchange Act of 1934 (the "1934 Act") and rules and regulations thereunder applicable to Amex in that they contribute to the maintenance of fair and orderly markets provide for a more orderly close when unusual circumstances in the market exist or when there is a delayed opening or halt or re-opening of the underlying securities of options listed on Amex, and avoid unnecessary trading rotations which might extend past 4:10 p.m., thus avoiding confusion by the investing public. Therefore, the proposed rule changes are consistent with Section 6(b)(5) of the 1934 Act, which provides in pertinent part, that Amex rules be designed to promote just and equitable principles of trade and protect investors and the public interest.

Phlx submitted an identical statement of purpose and basis and its proposed amendment to Phlx Rule 101, Commentary .01.

### A. Amex and Phlx Statements on Burden on Competition

Amex states that its proposed rule change will not impose any burden on competition on any persons or businesses. Phlx also does not believe that its proposed rule change will impose any burden on competition.

### B. Amex and Phlx Statements on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The proposed rule changes were considered and approved by the Options

Committee of the Amex which is composed of Amex members and representatives of Amex member organizations. No comments were solicited or received by Phlx.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the *Federal Register* or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organizations consent, the Commission will:

(A) by order approve the proposed rule changes, or

(B) institute proceedings to determine whether the proposed rule changes should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 1100 L Street, N.W., Washington, D.C. Copies of such filings will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organizations. All submissions should refer to the file numbers in the caption above and should be submitted within 21 days after the date of this publication.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

August 7, 1981.

George A. Fitzsimmons,  
Secretary.

[FR Doc. 81-23654 Filed 8-13-81; 8:45 am]

BILLING CODE 8010-01-M



## DEPARTMENT OF THE TREASURY

## Office of the Secretary

## Final Procedures for Implementation of the NHPA Regulations

**AGENCY:** Department of the Treasury.

**ACTION:** Notice of final Treasury procedures to supplement the revised Advisory Council on Historic Preservation (ACHP) Regulations (36 CFR Part 800) for implementing the procedural provisions of the National Historic Preservation Act (NHPA).

**SUMMARY:** These final procedures, in the form of a Treasury directive effective upon the date of signature by the Deputy Secretary of the Treasury, are published as required by the ACHP Regulations. This directive reflects the revised ACHP Regulations and cancels Treasury Directive 75-02, "Department of the Treasury Historic Preservation Program," dated May 22, 1978. Since these procedures relate to agency organization, management and personnel, and will be issued as an internal directive in the Department of the Treasury Directives Manual, under Section 1(a)(3) of Executive Order 12291, "Federal Regulation," the provisions of the Order are not applicable.

Authority: 36 CFR Part 800

## FOR FURTHER INFORMATION CONTACT:

Mr. Anthony V. DiSilvestre, Office of Administrative Programs (AAE), Department of the Treasury, Washington, D.C. 20220 (202-376-0289).

The text of the Treasury directive is as follows:

## Subject: Department of the Treasury Historic Preservation Program

## 1. Purpose.

This directive establishes policy, standards, and procedures for the Departmental Historic Preservation Program.

## 2. Scope.

This directive applies to the Office of the Secretary and all bureaus.

## 3. Cancellation.

TD 75-02, "Department of the Treasury Historic Preservation Program," May 22, 1978.

## 4. Authority.

a. National Historic Preservation Act of 1966, as amended, (16 U.S.C. 470 et seq.)

b. Executive Order 11593, "Protection and Enhancement of the Cultural Environment," (16 U.S.C. 470), May 13, 1971.

c. Advisory Council on Historic Preservation Regulations, "Protection of Historic and Cultural Properties," 36

CFR Part 800, (44 FR 6068), January 30, 1979.

## 5. Policy.

It is recognized that some undertakings of the Department may have an effect on historic and cultural properties that are listed, eligible, or appear to be eligible for listing, in the National Register of Historic Places, and it is the policy of the Department to fully evaluate its undertakings, as necessary, in accordance with the requirements of the Advisory Council on Historic Preservation Regulations (hereinafter the ACHP Regulations), and the National Historic Preservation Act (NHPA). It is further the policy of the Department to encourage the preservation and enhancement, by identification, protection, and maintenance, of properties under its jurisdiction, or which may be affected by its undertakings, that are listed, eligible, or appear to be eligible for listing, in the National Register.

## 6. Responsibilities.

a. The Secretary of the Treasury is an ex officio member of the Advisory Council on Historic Preservation (ACHP), and is represented on the ACHP by the Designee indicated below.

b. The Assistant Secretary (Administration) is hereby designated as the Departmental Historic Preservation Officer and is responsible for the overall policy, direction, and administration of the Treasury Historic Preservation Program.

c. The Assistant Director (Environmental Programs), Office of Administrative Programs (AAE), under the general supervision of the Director of Administrative Programs, serves as the Designee of the Secretary of the Treasury to the ACHP, and provides staff support to the Assistant Secretary (Administration) in carrying out the above mentioned duties.

d. Assistant Secretaries and Heads of Bureaus: (1) are responsible for implementing the provisions of this directive, including the identification of National Register or eligible properties under their jurisdiction through the preparation and regular review of an inventory of all sites, buildings, districts, and objects that appear to qualify for listing in the National Register of Historic Places, and the protection of public and private National Register or eligible properties (including federal installations) in any Federal undertaking within their jurisdiction in a manner appropriate to the historical, architectural, archeological, or cultural character of the property;

(2) shall nominate for inclusion in the National Register of Historic Places any Treasury property which appears to

meet the National Register Criteria, such nominations shall be coordinated with AAE; and

(3) who have operations affected by special considerations are hereby authorized to issue supplementary procedures consistent with this directive for the implementation of the NHPA. Any such procedures shall be submitted for review and concurrence by the Assistant Secretary (Administration). Such procedures shall be published in the bureau directive system.

e. Bureau Environmental Quality Officers (BEQOs). Treasury directive 75-01.A, "Department of the Treasury Environmental Quality Program," (44 FR 39692), directs each bureau head to designate a BEQO with continuing staff responsibility for environmental quality matters. Because of the close working relationship and common requirements of the Environmental Quality and Historic Preservation Programs, BEQOs will be responsible for historic preservation matters, including the maintenance of the inventory required in paragraph d(1) above, in their respective bureaus.

## 7. Definitions.

The definitions contained at Section 800.2 of the ACHP Regulations are applicable and particular attention is directed to the following:

a. Undertaking means any Federal, federally assisted or federally licensed action, activity, or program, or the approval, sanction, assistance, or support of any non-Federal action, activity, or program. Undertakings include new and continuing projects and program activities that are:

(1) directly undertaken by Federal agencies;

(2) supported in whole or in part through Federal contracts, grants, subsidies, loans, loan guarantees, or other forms of direct and indirect funding assistance;

(3) carried out pursuant to a Federal lease, permit, license, certificate, approval, or other form of entitlement or permission; or

(4) proposed by a Federal agency for Congressional authorization or appropriation.

b. Area of the undertaking's potential environmental impact means that geographical area within which direct and indirect effects generated by the undertaking could reasonably be expected to occur and thus cause a change in the historical, architectural, archeological, or cultural qualities possessed by a National Register or eligible property.

c. National Register means the National Register of Historic Places. It is



a register of districts, sites, buildings, structures, and objects of national, State, or local significance in American history, architecture, archeology, and culture. The Register is maintained by the National Park Service, Department of the Interior. Properties are nominated by States and Federal agencies for inclusion in the Register with the concurrence and approval of the Secretary of the Interior. Copies of the National Register are available for review in AAE, and the Treasury Library, Main Treasury building. An update of the Register is also published in the Federal Register in February of each year.

d. *National Register Property* means a district, site, building, structure, or object included in the National Register.

e. *Eligible property* means any district, site, building, structure, or object that meets the National Register Criteria.

f. *National Register Criteria* means the Criteria established by the Secretary of the Interior to evaluate properties to determine whether they are eligible for inclusion in the National Register (see 36 CFR 1202.6).

g. *State Historic Preservation Officer (SHPO)* means the appointed official who is responsible for administering the NHPA within a State or jurisdiction, or a designated representative authorized to act for the SHPO.

#### 8. Background.

a. Historic Preservation is the term used to describe activities concerning the protection and enhancement of the cultural and manmade environment. The National Historic Preservation Act of 1966 established a National Historic Preservation Program which includes review of proposed Federal undertakings which may affect National Register or eligible properties. This program applies to Treasury in that the Department owns and operates several properties which have been designated as National Register properties, and tenants other properties that are subject to historic preservation regulations. The Department also undertakes certain licensing and approval activities which may require historic preservation review.

b. The NHPA also established the Advisory Council on Historic Preservation as an independent Federal agency to coordinate and advise on Federal historic preservation activities. Federal agencies are required to consult with the ACHP concerning any proposed undertakings that might affect any National Register or eligible properties. Paragraph 9 below outlines the procedures to be followed in the event a proposed Departmental

undertaking may affect National Register or eligible properties. These procedures were established in the ACHP Regulations.

#### 9. Departmental Historic Preservation Procedures.

a. *General.* Section 106 of the NHPA requires that Treasury afford ACHP the opportunity to comment on proposed undertakings that may have an effect on National Register or eligible properties. The ACHP Regulations specify the procedures Federal agencies will follow when their undertakings may affect a property included or eligible for inclusion in the National Register. Undertakings in Washington, D.C., will, in certain cases, also require review and approval by the U.S. Commission of Fine Arts (see paragraph 11 below).

b. *Procedures for National Register or Eligible Properties.* In the early stages of planning or consideration of any proposed undertaking that may affect a public or private National Register or eligible property in the area of the undertaking's potential environmental impact, the responsible bureau official shall, in coordination with AAE, carry out the following historic preservation review procedures:

(1) *Identification of National Register or Eligible Properties.* An affirmative effort shall be made to locate and identify any National Register or eligible property that is located within the area of the undertaking's potential environmental impact and that may be affected by the undertaking. The identification process shall consist of:

(a) First, consulting with the appropriate SHPO, and reviewing the published lists of National Register or eligible properties and any other resources available which would provide information helpful in determining whether National Register or eligible properties may be located within the area of the undertaking's potential environmental impact.

(b) After an affirmative effort has been made to locate and identify any properties which are included or which may be eligible for inclusion in the National Register, and in consultation with the SHPO, the National Register Criteria shall be applied to any identified properties which may be eligible.

(c) If the responsible bureau official and the SHPO agree that no property identified as potentially eligible meets the National Register Criteria, then this determination shall be jointly documented, and the undertaking may proceed. Such determinations shall be made available for public inspection.

(d) If it is determined that an identified property meets the National

Register Criteria, or if no determination can be mutually agreed upon, AAE shall coordinate a request to the Secretary of the Interior for a final determination of the property's eligibility for inclusion in the National Register. The undertaking may then proceed, as appropriate, on the basis of the Secretary's determination.

(2) *Determination of the Effect of the Undertaking Upon Each National Register or Eligible Property.* For each National Register or eligible property located within the area of the proposed undertaking's potential environmental impact, the Criteria of Effect (see § 800.3(a), ACHP Regulations) shall be applied in consultation with the SHPO, to determine whether the undertaking will have an effect upon the property.

(a) If it is determined that the undertaking will have "no effect," the undertaking may proceed. A determination of "no effect" will be documented by AAE, and shall be made available for public inspection.

(b) If it is determined that there is an "effect," then the Criteria of Adverse Effect (see § 800.3(b), ACHP Regulations) shall be applied.

(c) If, in consultation with the SHPO, it is found that there will be "no adverse effect" on the property, then documentation of such a determination shall be forwarded by AAE to ACHP for review in accordance with § 800.6 of the ACHP Regulations. The documentation of "no adverse effect" shall contain the information outlined in § 800.13(a) of the ACHP Regulations. If ACHP concurs with the finding of "no adverse effect," or does not respond within 30 days, then the public should be notified and the project may proceed.

(d) If the application of the Criteria of Adverse Effect shows an effect on the property to be "adverse," or if ACHP does not accept the determination of "no effect" pursuant to review under § 800.6 of the ACHP Regulations, then the responsible bureau will prepare, for approval and signature by the Assistant Secretary (Administration), on behalf of the Department, a Preliminary Case Report requesting the comments of ACHP (see § 800.13(b), ACHP Regulations). The Treasury Designee to the ACHP will notify the concerned SHPO of the request, and will participate in the consultation process set forth in § 800.6(b) of the ACHP Regulations. This consultation process focuses primarily on identification of feasible and prudent alternatives to avoid or mitigate any adverse effects on the National Register or eligible property.



(e) The bureau may not proceed with, or sanction any action, or make any irreversible or irretrievable commitment, that could have an adverse effect on the National Register or eligible property, or that would foreclose the consideration of modifications or alternatives to the undertaking that could avoid, mitigate, or minimize such adverse effects, until ACHP issues its comments.

(3) *ACHP Comments.* (a) At the end of the consultation process, if Treasury ACHP, and the SHPO are in agreement on which alternatives may best avoid or mitigate any adverse effects, a Memorandum of Agreement shall be prepared (see § 800.6(c), ACHP Regulations) and the undertaking may proceed, after public notification. Any such memorandums will be approved and signed by the Assistant Secretary (Administration).

(b) If, however, none of the alternatives is agreeable to all three parties, a further report shall be prepared by the responsible bureau official, in consultation with AAE, for review and comment by ACHP (see § 800.13(c)(2), ACHP Regulations). Such reports will be approved and signed by the Assistant Secretary (Administration).

(c) At the conclusion of ACHP's review, its comments and recommendations will be transmitted to the Secretary of the Treasury and published in the *Federal Register* by ACHP. These comments shall be taken into account by the responsible official in reaching a final decision with regard to the undertaking. After a final decision is reached, the Assistant Secretary (Administration) will submit a written report to ACHP describing the actions taken in response to its comments; the actions taken by other parties pursuant to the actions of the Department; and the effect that such actions will have on the affected National Register or eligible property. Such reports shall be prepared by the responsible bureau official in consultation with AAE.

(4) *Public Involvement.* All reasonable steps should be taken to insure that adequate information and opportunity are provided for the public to effectively participate in decisions involving National Register or eligible properties, in accordance with § 800.15 of the ACHP Regulations.

c. *Maintenance of National Register or Eligible Properties.* (1) *Background.* Executive Order 11593 directs Federal agencies to " \* \* \* initiate measures and procedures to provide for the maintenance, through preservation, rehabilitation, or restoration of Federally-owned and registered sites at professional standards prescribed by

the Secretary of the Interior." The Order also directs Interior to develop and disseminate " \* \* \* to Federal agencies and State and local governments information concerning professional methods and techniques for preserving, improving, restoring and maintaining historic properties."

(2) *Action.* The heads of bureaus occupying National Register or eligible properties shall, within the scope of their authority, ensure that actions are taken to preserve the historical and architectural character of such properties by:

(a) incorporating historic preservation measures into the daily and cyclical maintenance programs of such properties;

(b) conducting or requesting appropriate research and documentation studies of the historical and architectural development of such properties in connection with the planning of rehabilitation or restoration projects; and

(c) acting in accordance with the procedures established in this directive.

#### 10. *Undertakings Involving Both Treasury and the General Services Administration (GSA).*

a. *Background.* (1) In addition to a National Historic Preservation Officer who is part of GSA's Public Buildings Service headquarters organization, there are also Regional Historic Preservation Officers (RHPOs) directly responsible for activities in each GSA region. The RHPOs determine how projects will affect National Register or eligible properties in accordance with the ACHP Regulations. This process is similar to the Treasury procedures outlined in paragraph 9 of this directive. The GSA Historic Preservation Officer and AAE maintain a working relationship for review and compliance of Federal historic preservation requirements involving joint projects. Such projects shall also be coordinated with Treasury's Office of Property Management, Office of Administrative Programs (AAR), in keeping with the provisions of Treasury Directives 72-20.A, "Acquisition of Real Property," July 26, 1979, and 72-20.B, "Utilization and Disposal of Real Property," August 20, 1979.

(2) Treasury and GSA may be jointly involved in fulfilling historic preservation requirements regarding proposed undertakings involving properties: controlled by GSA and utilized by Treasury; controlled by Treasury, in which a proposed project will involve work by GSA; or, declared excess by Treasury. In any undertakings jointly involving Treasury and GSA, the primary responsibility for historic

preservation compliance, in accordance with the ACHP Regulations, belongs to the agency which controls the property.

b. *Action.* Heads of bureaus or their representatives will contact AAE and the GSA RHPO during the early planning stages of proposed undertakings involving properties as described in paragraph a (2) above.

c. *Procedures.* The procedures for joint Treasury-GSA involvement are as follows:

(1) Notification by bureaus of proposed undertakings which may affect the architectural or historic features of any bureau-utilized National Register or eligible property controlled by GSA, or controlled by Treasury and which will involve GSA, shall be by memorandum to AAE, and shall include the following information: project title; expected initiating date; justification of the project; scope of the project; possible impacts of the project on the historic or architectural fabric of the property; and proposed methods of avoiding or mitigating any adverse impact.

(2) AAE and the GSA RHPO will review the project data and, as necessary, arrange to have further investigations conducted:

(a) for property controlled by GSA, if it is determined that the proposed undertaking does not affect the historic or architectural features of the property, a concurrence memorandum will be issued by the GSA RHPO, in consultation, as may be necessary, with the appropriate SHPO. If it is determined that the proposed undertaking may affect the property, the GSA RHPO will coordinate the necessary historic preservation compliance in accordance with the ACHP Regulations; and

(b) for property controlled by Treasury, if it is determined that the proposed undertaking does not affect the historic or architectural features of the property, a concurrence memorandum will be issued by AAE, in consultation, as may be necessary, with the appropriate SHPO. If it is determined that the proposed undertaking may affect the property, AAE will coordinate the necessary historic preservation compliance in accordance with the ACHP Regulations.

(3) Bureau notifications to AAE of proposals to dispose of excess real property shall describe any applicable historical data and the environmental and architectural appearance of the property. AAE will review the notification data and arrange for further investigations, as may be necessary, to determine any environmental, historical, or cultural impacts that might occur



upon the disposal of the property. AAE will then forward the notification data and the results of any investigations to GSA for appropriate resolution in connection with the proposal.

#### 11. U.S. Commission of Fine Arts.

##### a. Background. (1) The U.S.

Commission of Fine Arts (hereinafter referred to as the Commission) was established in 1910 to advise the President, Congress, and Government agencies on art and design matters, particularly those pertaining to the appearance of Washington, D.C. Its duties include the design review of all statues, fountains, or monuments to be erected by the United States Government, and the review of any proposals for statues, fountains, or monuments to be erected in the public areas of the District of Columbia. Legislation and Executive Orders have extended the authority of the Commission concerning architectural review of plans or proposals for: new construction of all public buildings anywhere in the District of Columbia; and new construction of, or alterations to, public and private buildings in certain designated areas of the District of Columbia.

(2) Plans or proposals for new construction of, or alterations to public and private buildings located in the vicinity of the following areas of Washington, D.C., require the review of the Commission: the Capitol grounds; the White House grounds; Lafayette Park; Pennsylvania Avenue from the Capitol to the White House; Rock Creek Park; and Potomac Park and the Mall park system. Plans or proposals for building or demolition in the "Old Georgetown" historic district also require the review of the Commission.

b. Action. Responsible officials of bureaus proposing any undertakings that may require review by the Commission, in addition to any review by the ACHP, in that the undertakings may involve plans or proposals for public buildings located, or to be located in Washington, D.C., or public or private buildings located in the areas of Washington, D.C., described in subparagraph (2) above, will contact AAE, in order to initiate the necessary review procedures. Such reviews shall also be coordinated with AAR. Undertakings requiring the

Commission's review include, but are not limited to, new construction, reconstruction, renovation (especially alterations to architectural details), exterior building signs, or demolition.

c. Procedures. Information concerning proposed bureau undertakings which may involve plans or proposals requiring review by the Commission shall be submitted to the Commission by AAE. The Commission meets once a month in Washington, D.C., and information on proposed undertakings must be submitted at least two weeks prior to each meeting. Such information will be prepared jointly by the responsible bureau and AAE in consultation with the Commission staff. The Commission's comments on such proposed undertakings will be available within thirty days of its review.

#### 12. Historic Preservation Review in Environmental Assessments and Impact Statements.

a. Background. (1) The National Environmental Policy Act states that it is a continuing responsibility of the Federal Government to act so that the Nation may " \* \* \* preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity and variety of individual choice."

(2) Section 1502.25(a) of the Council on Environmental Quality "National Environmental Policy Act Regulations" (40 CFR Parts 1500-1508), which is implemented in paragraph 19a of Treasury Directive 75-01A, states:

To the fullest extent possible, agencies shall prepare draft environmental impact statements concurrently with and integrated with environmental impact analyses and related surveys and studies required by \* \* \* the National Historic Preservation Act of 1966 \* \* \* and other environmental review laws and executive orders.

b. Action. Heads of bureaus shall contact AAE through their BEQOs during the early planning stages of any undertaking that may affect the human environment, so that the requisite environmental review can be coordinated with the consideration of any impact on National Register or eligible properties.

c. Procedures. (1) Notification of a proposed undertaking that may require an environmental review and

consideration of any impact on National Register or eligible properties shall be in the form of a memorandum from the responsible bureau official to AAE providing the information outlined in paragraph 10c(1) above.

(2) AAE will review the project data and, as necessary, arrange for further investigations to be conducted. If, in consultation with the appropriate SHPO, it is determined that the undertaking will have no adverse impact on National Register or eligible properties, the determination will be documented in the environmental assessment or impact statement. If it is determined that the undertaking may have an adverse impact on National Register or eligible properties, the ACHP Regulations will be implemented even if an environmental assessment or impact statement is not required. If an assessment or impact statement is required, the responsible bureau will act in accordance with Treasury Directive 75-01A, and the requirements set out in § 800.9 of the ACHP Regulations.

#### 13. Resources Discovered During Construction.

In the event that previously unidentified National Register or eligible properties are discovered after construction has started on a project which has already been cleared pursuant to the procedures outlined in paragraphs 9 and 10 of this directive, the responsible bureau shall immediately contact AAE, and shall comply, as necessary, with the procedures outlined in § 800.7 of the ACHP Regulations.

#### 14. Exclusions.

This directive is not applicable to Treasury undertakings outside the United States and its territories, or to general purpose loan guarantees or payments by the Department such as the Chrysler Corporation loan guarantee or Revenue Sharing payments.

#### 15. Office of Primary Interest.

Assistant Director (Environmental Programs), Office of Administrative Programs, Office of the Assistant Secretary (Administration).

R. T. McNamar,  
Deputy Secretary of the Treasury.

August 11, 1981.

[FR Doc. 81-23670 Filed 8-13-81; 8:45 am]

BILLING CODE 4810-25-M



## VETERANS ADMINISTRATION

## Station Committee on Educational Allowances; Meeting

Notice is hereby given pursuant to Section V, Review Procedure and Hearing Rules, Station Committee on Educational Allowances that on Wednesday, September 9, 1981, at 10:00 a.m., the Veterans Administration Regional Office, New York Station Committee on Educational Allowances shall at 252 Seventh Avenue, 16th Floor, Director's Conference Room, conduct a hearing to determine whether Veterans Administration benefits to all eligible persons enrolled in Roberts Technical and Trade School, 517 West 57th Street, New York, NY 10019 should be discontinued, as provided in 38 CFR 21.4134, because a requirement of law is not being met or a provision of the law has been violated. All interested persons shall be permitted to attend, appear before, or file statements with the committee at time and place.

Dated: August 6, 1981.

Peter A. Kovacs,  
Director.

[FR Doc. 81-23795 Filed 8-13-81; 8:45 am]

BILLING CODE 8320-01-M



# Sunshine Act Meetings

Federal Register

Vol. 48, No. 157

Friday, August 14, 1981

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

## CONTENTS

|                                                       | Items |
|-------------------------------------------------------|-------|
| Commodity Credit Corporation.....                     | 1, 2  |
| Commodity Futures Trading Commission.....             | 3     |
| Equal Employment Opportunity Commission.....          | 4, 5  |
| Federal Home Loan Bank Board.....                     | 6     |
| Federal Maritime Commission.....                      | 7     |
| Federal Mine Safety and Health Review Commission..... | 8     |
| Federal Reserve System.....                           | 9, 10 |
| National Transportation Safety Board..                | 11    |
| Parole Commission.....                                | 12    |

### 1

#### COMMODITY CREDIT CORPORATION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 46 FR 39542, August 3, 1981.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:30 a.m., July 29, 1981.

STATUS: Closed.

CHANGE IN MEETING: Addition of following closed item to the meeting: a dairy export sale.

SUPPLEMENTARY INFORMATION: The General Counsel certified this meeting could be closed to consider this item. All members of the Board present as follows voted to close the meeting to consider this item:

1. John R. Block, Secretary of Agriculture, Chairman.
2. Seeley G. Lodwick, Member.
3. William G. Leshner, Member.
4. C. W. McMillan, Member.
5. Mary C. Jarratt, Member.
6. Frank W. Naylor, Member.

#### CONTACT PERSON FOR MORE

INFORMATION: Edward Hews, Secretary, Commodity Credit Corporation, Room 3088 South Building, U.S. Department of Agriculture, Washington, D.C. 20013; telephone (202) 447-7583.

[S-1238-81 Filed 8-12-81; 11:22 am]

BILLING CODE 3410-05-M

### 2

#### COMMODITY CREDIT CORPORATION.

"FEDERAL REGISTER" CITATION OF

PREVIOUS ANNOUNCEMENT: 46 FR 39542, August 3, 1981.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:30 a.m., July 29, 1981.

STATUS: Closed.

CHANGE IN MEETING: Addition of following closed item to the meeting: a dairy export sale.

SUPPLEMENTARY INFORMATION: The General Counsel certified this meeting could be closed to consider this item. All members of the Board present as follows voted to close the meeting to consider this item:

1. John R. Block, Secretary of Agriculture, Chairman.
2. Seeley G. Lodwick, Member.
3. William G. Leshner, Member.
4. C. W. McMillan, Member.
5. Mary C. Jarratt, Member.
6. Frank W. Naylor, Member.

#### CONTACT PERSON FOR MORE

INFORMATION: Edward Hews, Secretary, Commodity Credit Corporation, Room 3088N-South Building, U.S. Department of Agriculture, Washington, D.C. 20013; telephone (202) 447-7583.

[S-1239-81 Filed 8-12-81; 11:22 am]

BILLING CODE 3410-05-M

### 3

#### COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 2 p.m., Tuesday, August 18, 1981.

PLACE: 2033 K Street, N.W., Washington, D.C., eighth floor conference room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Judicial Session.

#### CONTACT PERSON FOR MORE

INFORMATION: Jane Stuckey, 254-6314.

[S-1240-81 Filed 8-12-81; 12:50 pm]

BILLING CODE 6351-01-M

### 4

#### EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.

DATE AND TIME: 9:30 a.m. (eastern time), Tuesday, August 18, 1981.

PLACE: Commission Conference Room 5240, fifth floor, Columbia Plaza Office Building, 2401 E Street NW., Washington, D.C. 20506.

STATUS: Part will be open to the public and part will be closed to the public.

MATTERS TO BE CONSIDERED: Open:

1. Freedom of Information Act Request No. 81-5-FOIA-9-HU, concerning a request for numerous documents related to Charge No. 064-81-0024.

2. Freedom of Information Act Request No. 81-4-FOIA-66-CH, concerning a request for documents from a closed age charge file.

3. Freedom of Information Act Request No. 81-6-FOIA-171, concerning a request for EEO-1 reports from seventeen corporations.

4. Freedom of Information Act Request No. 81-6-FOIA-35-MK, concerning a request for information supplied by respondent in open Title VII charge files.

5. Equal Pay Act Annual Report.

6. Report on Commission Operations by the Executive Director.

Closed:

1. Ratification of a Notation Order to intervene in a case.

2. Litigation Authorization; Central Counsel Recommendations.

3. Proposed Budget for FY 1983.

4. Proposed modification of a contract for professional services.

Note.—Any matter not discussed or concluded may be carried over to a later meeting.

#### CONTACT PERSON FOR MORE

INFORMATION: Treva I. McCall, Executive Officer, Executive Secretariat, at (202) 634-6748.

This Notice Issued August 11, 1981.

[S-1233-81 Filed 8-12-81; 10:10 am]

BILLING CODE 6570-06-M

### 5

#### EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.

TIME AND DATE: 9:30 a.m. (eastern time), Tuesday, August 18, 1981.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: S-12-33-81.

CHANGE IN THE MEETING: The following items were inadvertently omitted from the original announcement under the portion open to the public:

1. Freedom of Information Act Appeal Request No. 81-5-FOIA-161 and FOIA No. 81-6-FOIA-12-BI, concerning a request for all documents that served as a basis for a Commissioner's charge, and Sections III and IV of the Systemic Training Manual.

2. Freedom of Information Act Appeal Request No. 81-6-FOIA-25-PX, concerning a request for a memorandum analyzing and giving instructions on a closed Title VII charge file.

#### CONTACT PERSON FOR MORE

INFORMATION: Treva I. McCall,



Executive Officer, Executive Secretariat,  
at (202) 634-6748.

This notice issued August 12, 1981.

[S-1241-81 Filed 8-12-81; 2:30 pm]

BILLING CODE 6570-06-M

6

#### FEDERAL HOME LOAN BANK BOARD.

"FEDERAL REGISTER" CITATION OF  
PREVIOUS ANNOUNCEMENT: 46 FR 40131,  
Thursday, August 6, 1981.

PREVIOUSLY ANNOUNCED TIME AND DATE  
OF MEETING: 10 a.m., Thursday, August  
13, 1981.

PLACE: 1700 G Street, N.W., board room,  
fifth floor, Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE  
INFORMATION: Mr. Marshall (202-377-  
6879).

CHANGES IN THE MEETING: The following  
item has been added to the open portion  
of the Bank Board meeting scheduled  
Thursday, August 13, 1981.

Partnership NOW Accounts  
No. 529, August 12, 1981.

[S-1243-81 Filed 8-12-81; 3:39 pm]

BILLING CODE 6720-01-M

7

#### FEDERAL MARITIME COMMISSION.

TIME AND DATE: 9 a.m., August 20, 1981.

PLACE: Hearing Room One, 1100 L  
Street, N.W., Washington, D.C. 20573.

STATUS: Parts of the meeting will be  
open to the public. The rest of the  
meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Portions  
open to the public:

1. Agreement No. 50-38: Modification of the  
Pacific/Australia-New Zealand Conference  
Agreement to Remove Zonal Restriction on  
Transshipment Service.

2. Petitions of the West Coast United States  
& Canada/India, Pakistan, Ceylon & Burma  
Rate Agreement and the India, Pakistan,  
Ceylon & Burma/West Coast United States  
Rate Agreement for waiver of independent  
policing authority under Commission General  
Order 7.

3. Docket No. 80-70: Status of Bulk  
Commodities with Respect to Tariff Filing  
Requirements—Proposed Final Interpretative  
Rule.

4. Proposed Exemption of Bulk  
Commodities from the Tariff Filing  
Requirements of Section 18(b) of the Shipping  
Act, 1916.

5. Docket No. 81-6: Exemption of Certain  
Agreements from the Requirements of  
Section 15, Shipping Act, 1916—  
Consideration of Comments Received in  
Response to Notice of Proposed Rulemaking  
and Proposed Final Rule.

6. Docket No. 81-8: Rohm 7 Haas Company  
v. Italian Line—Consideration of

Respondent's Appeal of Ruling of Presiding  
Officer and Complainant's Request for Oral  
Argument.

Portions closed to the public:

1. Docket No. 79-68: Military Sealift  
Command, Department of the Navy v.  
Matson Navigation Company, Inc.—  
Consideration of Complainant's Appeal from  
Ruling of Presiding Officer.

2. Fact Finding Investigation No. 12:  
Certification to Commission of Joint Motion  
to Quash.

CONTACT PERSON FOR MORE  
INFORMATION: Francis C. Hurney,  
Secretary (202) 523-5725.

[S-1235-81 Filed 8-12-81; 10:36 am]

BILLING CODE 6730-01-M

8

#### FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION.

August 4, 1981.

TIME AND DATE: 10 a.m., Wednesday,  
August 5, 1981.

PLACE: Room 600, 1730 K Street, N.W.,  
Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The  
Commission will consider and act upon  
the following:

1. Capitol Aggregates, Inc., Docket No.  
DENV 79-531-PM, etc. (Petition for  
Discretionary Review)

It was determined by a unanimous  
vote of Commissioners that Commission  
business required that a meeting be held  
on this item and that no earlier  
announcement of the meeting was  
possible.

CONTACT PERSON FOR MORE  
INFORMATION: Jean Ellen, 202-653-5632.

[S-1234-81 Filed 8-12-81; 10:37 am]

BILLING CODE 6820-12-M

9

#### FEDERAL RESERVE SYSTEM.

Committee on Employee Benefits.

TIME AND DATE: 3 p.m., Tuesday, August  
18, 1981.

PLACE: 20th Street and Constitution  
Avenue, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. The Committee's agenda will consist of  
matters relating to (a) the general  
administrative policies and procedures of the  
Retirement Plan, Thrift Plan, Long-Term  
Disability Income Plan, and Insurance Plan  
for Employees of the Federal Reserve System;  
(b) general supervision of the operations of  
the Plan; (c) the maintenance of proper  
accounts and accounting procedures in  
respect to the Plans; (d) the preparation and  
submission of an annual report on the  
operations of each of such Plans; (e) the

maintenance and staffing of the Office of the  
Federal Reserve Employee Benefits System;  
and (f) the arrangement for such legal  
actuarial, accounting, administrative, and  
other services as the Committee deems  
necessary to carry out the provisions of the  
Plan.

Specific items will include the 1982 budget  
for the Office of the Federal Reserve  
Employee Benefits System, a proposed  
amendment to the By-Laws, and a proposed  
survivorship settlement under the Retirement  
Plan.

CONTACT PERSON FOR MORE  
INFORMATION: Mr. Joseph R. Coyne,  
Assistant to the Board, (202) 452-3204.

Dated: August 11, 1981.

William W. Wiles,  
Secretary of Board.

[S-1236-81 Filed 8-12-81; 10:52 am]

BILLING CODE 6210-01-M

10

#### FEDERAL RESERVE SYSTEM.

Board of Governors.

TIME AND DATE: 10:00 a.m., Wednesday,  
August 19, 1981.

PLACE: 20th Street and Constitution  
Avenue, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments,  
promotions, assignments, reassignments, and  
salary actions) involving individual Federal  
Reserve System employees.

2. Any items carried forward from a  
previously announced meeting.

CONTACT PERSON FOR MORE  
INFORMATION: Mr. Joseph R. Coyne,  
Assistant to the Board (202) 452-3204.

Dated: August 11, 1981.

William W. Wiles,  
Secretary of the Board.

[S-1237-81 Filed 8-12-81; 10:52 am]

BILLING CODE 6210-01-M

11

#### NATIONAL TRANSPORTATION SAFETY BOARD.

[NM-81-29]

"FEDERAL REGISTER" CITATION OF  
PREVIOUS ANNOUNCEMENT: 46 FR 40754,  
August 11, 1981.

PREVIOUSLY ANNOUNCED TIME AND DATE  
OF MEETING: 9 a.m., Tuesday, August 18,  
1981.

CHANGE IN MEETING: A majority of the  
Board has determined by recorded vote  
that the business of the Board requires  
revising the agenda of this meeting and  
that no earlier announcement was



possible. The agenda as now revised is set forth below:

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:**

1. *Aircraft Accident Report:* Texasgulf Lockheed JetStar, N50S, Westchester County Airport, White Plains, New York, February 11, 1981.

2. *Recommendation to the Federal Aviation Administration regarding Supplemental Type Certificate SA-1596CE.*

3. *Pipeline Accident Report:* Four Corners Pipe Line Company, Pipeline Rupture and Fire, Long Beach, California, December, 1980; and *Recommendations to Four Corners Pipe Line Company;* Aminoil USA, Inc.; Union Oil Company of California; Marlex Oil and Refining, Inc; Atlantic Richfield Co., Watson Refinery; Research and Special Program Administration (DOT); and American Society of Mechanical Engineers' Gas Piping Standards Committee.

4. *Aircraft Accident Report:* Air California Flight 338, Boeing 737-293, N468AC, Santa Ana, California, February 17, 1981.

5. *Railroad Accident Report:* Rear-end Collision of Union Pacific Railroad Company Freight Trains Extra 3119 West and Extra 8044 West, near Kelso, California, on November 17, 1980; and *Recommendations to the Union Pacific Railroad Company and to the Federal Railroad Administration.*

**CONTACT PERSON FOR MORE**

**INFORMATION:** Sharon Flemming, 202-382-6525.

August 12, 1981.

[S-1244-81 Filed 8-12-81; 3:40 pm]

**BILLING CODE 4910-58-M**

**12**

**PAROLE COMMISSION.**

[1P0401]

[National Commissioners (the Commissioners presently maintaining

offices at Bethesda, Maryland, Headquarters)]

**TIME AND DATE:** 9:30 a.m., Friday, August 14, 1981.

**PLACE:** Room 420-F, One North Park Building, 5550 Friendship Boulevard, Bethesda, Maryland 20015.

**STATUS:** Closed pursuant to a vote to be taken at the beginning of the meeting.

**MATTERS TO BE CONSIDERED:** Referrals from Regional Commissioners of approximately 7 cases in which inmates of Federal prisons have applied for parole or are contesting revocation of parole or mandatory release.

**CONTACT PERSON FOR MORE**

**INFORMATION:** Linda Wines Marble, Chief Case Analyst, National Appeals Board, United States Parole Commission. (301) 492-5926.

[S-1242-81 Filed 8-12-81; 2:58 pm]

**BILLING CODE 4410-01-M**



# Reader Aids

Federal Register

Vol. 46, No. 157

Friday, August 14, 1981

## INFORMATION AND ASSISTANCE

### PUBLICATIONS

#### Code of Federal Regulations

|                                              |              |
|----------------------------------------------|--------------|
| CFR Unit                                     | 202-523-3419 |
| General information, index, and finding aids | 523-3517     |
| Incorporation by reference                   | 523-5227     |
| Printing schedules and pricing information   | 523-4534     |
|                                              | 523-3419     |

#### Federal Register

|                                              |          |
|----------------------------------------------|----------|
| Corrections                                  | 523-5237 |
| Daily Issue Unit                             | 523-5237 |
| General information, index, and finding aids | 523-5227 |
| Public Inspection Desk                       | 633-6930 |
| Scheduling of documents                      | 523-3187 |

#### Laws

|                       |          |
|-----------------------|----------|
| Indexes               | 523-5282 |
| Law numbers and dates | 523-5282 |
|                       | 523-5266 |
| Slip law orders (GPO) | 275-3030 |

#### Presidential Documents

|                                              |          |
|----------------------------------------------|----------|
| Executive orders and proclamations           | 523-5233 |
| Public Papers of the President               | 523-5235 |
| Weekly Compilation of Presidential Documents | 523-5235 |

#### Privacy Act Compilation

|  |          |
|--|----------|
|  | 523-3517 |
|--|----------|

#### United States Government Manual

|  |          |
|--|----------|
|  | 523-5230 |
|--|----------|

### SERVICES

|                                                                       |              |
|-----------------------------------------------------------------------|--------------|
| Agency services                                                       | 523-3408     |
| Automation                                                            | 523-3408     |
| Dial-a-Reg                                                            |              |
| Chicago, Ill.                                                         | 312-663-0884 |
| Los Angeles, Calif.                                                   | 213-688-6694 |
| Washington, D.C.                                                      | 202-523-5022 |
| Magnetic tapes of FR issues and CFR volumes (GPO)                     | 275-2867     |
| Public briefings: "The Federal Register—What It Is and How To Use It" | 523-5235     |
| Public Inspection Desk                                                | 633-6930     |
| Regulations Writing Seminar                                           | 523-5240     |
| Special Projects                                                      | 523-4534     |
| Subscription orders (GPO)                                             | 783-3238     |
| Subscription problems (GPO)                                           | 275-3054     |
| TTY for the deaf                                                      | 523-5239     |

## FEDERAL REGISTER PAGES AND DATES, AUGUST

|             |    |
|-------------|----|
| 39431-39560 | 3  |
| 39561-39808 | 4  |
| 39809-39982 | 5  |
| 39983-40180 | 6  |
| 40181-40500 | 7  |
| 40501-40670 | 10 |
| 40671-40768 | 11 |
| 40769-40858 | 12 |
| 40859-41018 | 13 |
| 41019-41486 | 14 |

## CFR PARTS AFFECTED DURING AUGUST

At the end of each month, the Office of the Federal Register publishes separately a list of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

|                 |                                                     |
|-----------------|-----------------------------------------------------|
| 921             | 40892                                               |
| 1011            | 39440                                               |
| 1079            | 40703                                               |
| 1207            | 40769                                               |
| 2852            | 41077                                               |
| <b>1 CFR</b>    |                                                     |
| 470             | 39431                                               |
| <b>3 CFR</b>    |                                                     |
| Proclamations:  |                                                     |
| 4851            | 40501                                               |
| <b>5 CFR</b>    |                                                     |
| Ch. XIV         | 40769                                               |
| 410             | 40671                                               |
| 531             | 41019                                               |
| 540             | 41019                                               |
| 2422            | 40672                                               |
| 2423            | 40672                                               |
| 2425            | 40672                                               |
| 2429            | 40672                                               |
| 2442            | 40672                                               |
| Proposed Rules: |                                                     |
| 531             | 41077                                               |
| 1201            | 40702                                               |
| <b>7 CFR</b>    |                                                     |
| 2               | 40675                                               |
| 68              | 39608, 41020                                        |
| 250             | 41472                                               |
| 272             | 39561                                               |
| 273             | 39561                                               |
| 331             | 41021                                               |
| 801             | 40676                                               |
| 908             | 39983, 40859                                        |
| 910             | 40202, 41029                                        |
| 916             | 40503                                               |
| 917             | 40503                                               |
| 919             | 40503                                               |
| 921             | 40503                                               |
| 922             | 40503                                               |
| 923             | 40503                                               |
| 924             | 40503                                               |
| 926             | 40206                                               |
| 930             | 40503                                               |
| 945             | 40503                                               |
| 946             | 40503                                               |
| 947             | 40503                                               |
| 948             | 40503                                               |
| 953             | 40503                                               |
| 958             | 40503                                               |
| 967             | 40503                                               |
| 985             | 40503                                               |
| 989             | 39983                                               |
| 993             | 40503                                               |
| 1030            | 41029                                               |
| 1421            | 40859                                               |
| 1701            | 39563, 40678                                        |
| 1822            | 40769                                               |
| 2852            | 39563                                               |
| 2856            | 39566, 40678                                        |
| Proposed Rules: |                                                     |
| Ch. IX          | 40027                                               |
| 29              | 39438                                               |
| 277             | 40764                                               |
| 921             | 40892                                               |
| 1011            | 39440                                               |
| 1079            | 40703                                               |
| 1207            | 40769                                               |
| 2852            | 41077                                               |
| <b>8 CFR</b>    |                                                     |
| 100             | 39573                                               |
| 238             | 40504, 40505                                        |
| <b>9 CFR</b>    |                                                     |
| 73              | 40865                                               |
| 78              | 41031                                               |
| 92              | 39809                                               |
| <b>10 CFR</b>   |                                                     |
| 2               | 39573                                               |
| 205             | 39984                                               |
| 436             | 40678                                               |
| 780             | 39581                                               |
| Proposed Rules: |                                                     |
| 51              | 39440                                               |
| 95              | 39610                                               |
| 500             | 39442                                               |
| 501             | 39442                                               |
| 503             | 39442                                               |
| 504             | 39442                                               |
| 505             | 39442                                               |
| <b>12 CFR</b>   |                                                     |
| 203             | 40679                                               |
| 211             | 39810                                               |
| 303             | 40505                                               |
| Proposed Rules: |                                                     |
| 7               | 40520                                               |
| 614             | 40027, 40028                                        |
| 615             | 40029                                               |
| 1204            | 40773, 40892                                        |
| <b>13 CFR</b>   |                                                     |
| Proposed Rules: |                                                     |
| 124             | 39611                                               |
| <b>14 CFR</b>   |                                                     |
| 39              | 39431, 39990-39992, 40506-40508, 40865-40868        |
| 71              | 39432-39434, 39993-39995, 40509, 40510, 40869-40871 |
| 75              | 39995-39997                                         |
| 91              | 39606, 39997, 40885                                 |
| 97              | 39999                                               |
| Proposed Rules: |                                                     |
| 25              | 39558, 40527                                        |
| 39              | 40031                                               |
| 61              | 40529, 40646                                        |
| 63              | 40529                                               |
| 65              | 40529                                               |
| 67              | 40529                                               |
| 71              | 39443, 39444, 40032-40035, 40535, 40894, 40895      |
| 73              | 40034                                               |



75.....40035  
121.....40527  
145.....40529  
187.....40529  
221.....40703  
223.....40896  
250.....40703

**15 CFR**

369.....40001  
385.....39585  
399.....39585

**16 CFR**

13.....40001, 40770-40772  
455.....41328

**Proposed Rules:**

13.....39833, 40037, 40040,  
40774  
457.....39845  
460.....41080  
1204.....41081

**17 CFR**

200.....40001, 40003  
210.....40872  
240.....40872

**18 CFR**

1.....39846

**Proposed Rules:**

2.....39445  
3.....39846  
35.....39445  
271.....40043, 40044  
282.....41034  
375.....39846

**19 CFR**

200.....41036  
353.....39587  
355.....39587

**20 CFR**

410.....39588

**21 CFR**

103.....41037  
176.....39589  
520.....41038, 41040  
522.....41041  
558.....41041

**Proposed Rules:**

1030.....41102  
1308.....39848

**23 CFR**

450.....40154  
650.....40154

**24 CFR**

81.....39434  
300.....39810

**25 CFR**

258.....40510

**26 CFR**

1.....39589  
16A.....41043

**Proposed Rules:**

1.....40774

**27 CFR**

9.....39811, 40045, 40873

240.....39812  
252.....39812

**Proposed Rules:**

4.....39849  
9.....39852  
240.....39853  
252.....39853

**28 CFR**

41.....40686, 40687

**29 CFR**

1.....41043  
4.....41044  
5.....41043  
6.....41045  
1952.....41046

**Proposed Rules:**

1.....41444  
4.....41380  
5.....41456  
6.....41428  
8.....41438  
1910.....40704

**30 CFR**

700.....40650  
716.....41046  
785.....41046

**Proposed Rules:**

Ch. II.....40706  
700.....40652  
715.....39854  
730.....40706  
731.....40706  
732.....40706  
816.....39854  
817.....39854  
901.....40049  
906.....39855  
917.....40047  
931.....40050

**31 CFR**

51.....41047

**32 CFR**

54.....39817  
251.....39817

**33 CFR**

95.....40873  
100.....39435  
117.....39436

**Proposed Rules:**

100.....40057  
110.....40057  
117.....40057

**34 CFR**

629.....39778  
630.....39784  
631.....39784  
632.....39784  
633.....39784  
634.....39784  
635.....39784  
636.....39804

**36 CFR**

7.....39817, 40874

**Proposed Rules:**

221.....40706  
1190.....39764

**39 CFR**

2.....40876  
111.....41047  
224.....40876

**40 CFR**

35.....39590, 40511  
52.....39818, 39822, 40003-  
40006, 40512, 40688, 41050-  
41054  
62.....41055  
81.....40007, 41056  
123.....40689  
180.....39824-39827  
193.....39827  
204.....41057  
205.....41057  
211.....41057  
261.....40170

**Proposed Rules:**

52.....39611-39614, 39861-  
39864, 40536, 40774, 41103  
122.....40896  
123.....41103  
180.....39865  
204.....41104  
205.....41104  
211.....41104  
260.....40896  
261.....40058  
264.....40896  
434.....39456  
773.....40898

**41 CFR**

Ch. 18.....40009, 40019  
Ch. 101.....39436, 40690  
14-3.....40876  
101-4.....39593  
101-42.....39590  
101-43.....39590  
101-45.....39590  
101-46.....39590  
101-48.....39590

**42 CFR**

36.....40692  
64a.....39876  
405.....41059, 41061

**43 CFR**

**Proposed Rules:**  
2800.....39968  
2880.....39964

**44 CFR**

64.....39596, 40693, 40695  
65.....39597  
67.....39829, 41063-41074  
70.....41075, 41076

**Proposed Rules:**

67.....39456-39459, 39615,  
39621, 41110-41121

**45 CFR**

85.....40686, 40696

**46 CFR**

524.....40697

**Proposed Rules:**

Ch. I.....39460

**47 CFR**

73.....39603-39605, 40020-  
40024, 40698-40700, 40878,  
41076

**Proposed Rules:**

Ch. I.....40899  
2.....40536, 40904  
21.....40904  
22.....40536  
63.....40902  
67.....40707  
68.....40902  
73.....39627, 39629, 40059,  
40536, 40707-40710, 40776  
74.....40536  
87.....39630, 40904  
90.....39632, 40904  
94.....40904

**49 CFR**

512.....40513  
525.....40513  
553.....40513  
555.....40513  
613.....40154  
1033.....40513  
1100.....40516  
1128.....40772

**Proposed Rules:**

100-199 (Ch. I).....40540  
Ch. II.....39461  
175.....40540  
575.....40541  
1201.....40154, 40778  
1240.....40154  
1241.....40154

**50 CFR**

17.....40025, 40664  
20.....40879  
371.....39829  
611.....39831  
651.....39829  
652.....40884  
674.....40518, 40701

**Proposed Rules:**

654.....40062  
661.....39634



**AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK**

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday). This is a voluntary program. (See OFR NOTICE 41 FR 32914, August 6, 1976.)

| Monday          | Tuesday   | Wednesday | Thursday        | Friday    |
|-----------------|-----------|-----------|-----------------|-----------|
| DOT/SECRETARY   | USDA/ASCS |           | DOT/SECRETARY   | USDA/ASCS |
| DOT/COAST GUARD | USDA/FNS  |           | DOT/COAST GUARD | USDA/FNS  |
| DOT/FAA         | USDA/FSQS |           | DOT/FAA         | USDA/FSQS |
| DOT/FHWA        | USDA/REA  |           | DOT/FHWA        | USDA/REA  |
| DOT/FRA         | MSPB/OPM  |           | DOT/FRA         | MSPB/OPM  |
| DOT/NHTSA       | LABOR     |           | DOT/NHTSA       | LABOR     |
| DOT/RSPA        | HHS/FDA   |           | DOT/RSPA        | HHS/FDA   |
| DOT/SLSDC       |           |           | DOT/SLSDC       |           |
| DOT/UMTA        |           |           | DOT/UMTA        |           |
| CSA             |           |           | CSA             |           |

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday.

Comments on this program are still invited.

Comments should be submitted to the

Day-of-the-Week Program Coordinator,  
Office of the Federal Register,  
National Archives and Records Service,  
General Services Administration,  
Washington, D.C. 20408.

**List of Public Laws**

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

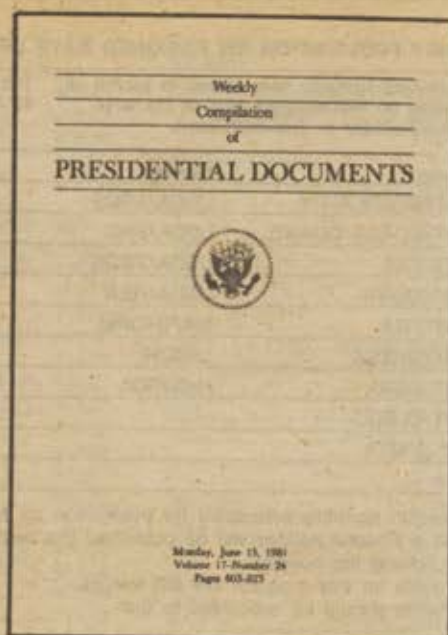
Last Listing August 10, 1981



The authentic text behind the news . . .

# The Weekly Compilation of PRESIDENTIAL DOCUMENTS

## Administration of Ronald Reagan



This unique service provides up-to-date information on Presidential policies and announcements. It contains the full text of the President's public speeches, statements, messages to Congress, news conferences, personnel appointments and nominations, and other Presidential materials released by the White House.

The Weekly Compilation carries a Monday dateline and covers materials released

during the preceding week. Each issue contains an Index of Contents and a Cumulative Index to Prior Issues.

Separate indexes are published quarterly, semiannually, and annually. Other features include lists of acts approved by the President and of nominations submitted to the Senate, a checklist of

White House press releases, and a digest of other Presidential activities and White House announcements.

Published by Office of the Federal Register, National Archives and Records Service, General Services Administration

### SUBSCRIPTION ORDER FORM

ENTER MY SUBSCRIPTION FOR 1 YEAR TO: WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS (PD)

@\$35.00 Domestic; @\$43.75 Foreign.

@\$79.00 if Domestic first-class mailing is desired.

### PLEASE PRINT OR TYPE

Name—First, Last

Company name or additional address line

Street address

City

State

ZIP Code

(or Country)

☐ Remittance Enclosed (Make checks payable to Superintendent of Documents)

☐ Charge to my Deposit Account No. ....

MAIL ORDER FORM TO:  
Superintendent of Documents  
Government Printing Office  
Washington, D.C. 20402



8-14-81  
Vol. 46—No. 157  
BOOK 2:  
Pages  
41285-41486

# federal register

Book 2 of 2 Books  
Friday, August 14, 1981

- 
- |       |                                                                                                                                 |
|-------|---------------------------------------------------------------------------------------------------------------------------------|
| 41288 | Part II—Labor/ESA/W&H:<br>Minimum Wages for Federal and Federally Assisted<br>Construction; General Wage Determination Decision |
|-------|---------------------------------------------------------------------------------------------------------------------------------|
- 
- |       |                                                                     |
|-------|---------------------------------------------------------------------|
| 41328 | Part III—FTC:<br>Sale of Used Motor Vehicles; Trade Regulation Rule |
|-------|---------------------------------------------------------------------|
- 
- |       |                                                                         |
|-------|-------------------------------------------------------------------------|
| 41380 | Part IV—Labor/ESA/W&H:<br>Labor Standards for Federal Service Contracts |
|-------|-------------------------------------------------------------------------|
- 
- |       |                                                                                                                                                                                                   |
|-------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 41428 | Part V—Labor/Sec'y:<br>Rules of Practice for Administrative Proceedings<br>Enforcing Labor Standards in Federal and Federally<br>Assisted Construction Contracts and Federal Service<br>Contracts |
|-------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
- 
- |       |                                                                                  |
|-------|----------------------------------------------------------------------------------|
| 41438 | Part VI—Labor/Sec'y:<br>Practice Before the Board of Service Contract<br>Appeals |
|-------|----------------------------------------------------------------------------------|
- 
- |       |                                                                          |
|-------|--------------------------------------------------------------------------|
| 41444 | Part VII—Labor/ESA/W&H:<br>Procedures for Predetermination of Wage Rates |
|-------|--------------------------------------------------------------------------|
- 
- |       |                                                                                                                                            |
|-------|--------------------------------------------------------------------------------------------------------------------------------------------|
| 41456 | Part VIII—Labor/ESA/W&H:<br>Labor Standards Provisions Applicable to Contracts<br>Covering Federally Financed and Assisted<br>Construction |
|-------|--------------------------------------------------------------------------------------------------------------------------------------------|
- 
- |       |                                                |
|-------|------------------------------------------------|
| 41472 | Part IX—USDA/FNS:<br>Food Distribution Program |
|-------|------------------------------------------------|
-



The Weekly  
Edition of  
PRESIDENTIAL  
DOCUMENTS

Introduction of  
Ronald Reagan

Reagan Library



# Registered

Friday  
August 14, 1981

---

## Part II

## Department of Labor

---

Employment Standards Administration,  
Wage and Hour Division

---

Minimum Wages for Federal and  
Federally Assisted Construction; General  
Wage Determination Decisions



## DEPARTMENT OF LABOR

Employment Standards  
Administration, Wage and Hour  
DivisionMinimum Wages for Federal and  
Federally Assisted Construction;  
General Wage Determination  
Decisions

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24-70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's Orders 12-71 and 15-71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions are effective from their date of

publication in the Federal Register without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedeas  
Decisions to General Wage  
Determination Decisions

Modifications and supersedeas decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedeas decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24-70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's orders 13-71 and 15-71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and supersedeas decisions are effective from their date of publication in the Federal Register without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is

encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Office of Government Contract Wage Standards, Division of Government Contract Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

New General Wage Determination  
Decisions

None.

Modifications to General Wage  
Determination Decisions

The numbers of the decisions being modified and their dates of publication in the Federal Register are listed with each State.

|                                |                 |
|--------------------------------|-----------------|
| California CA81-5132           | July 7, 1981.   |
| Connecticut CT81-3032          | May 15, 1981.   |
| District of Columbia DC81-3040 | June 5, 1981.   |
| Georgia:                       |                 |
| GA81-1191                      | Mar. 6, 1981.   |
| GA81-1192                      | Mar. 6, 1981.   |
| GA81-1193                      | Mar. 6, 1981.   |
| GA81-1194                      | Mar. 6, 1981.   |
| Iowa: IA80-4041                | Aug. 1, 1980.   |
| Louisiana:                     |                 |
| LA81-4024                      | May 1, 1981.    |
| LA81-4027                      | May 1, 1981.    |
| LA81-4046                      | July 6, 1981.   |
| Maryland: DC81-3040            | June 5, 1981.   |
| Massachusetts: MA80-2070       | Aug. 29, 1980.  |
| Nevada:                        |                 |
| NV81-5102                      | Feb. 6, 1981.   |
| NV81-5103                      | Feb. 6, 1981.   |
| NV81-5111                      | May 1, 1981.    |
| Ohio: OH81-2025                | May 22, 1981.   |
| Pennsylvania: PA81-3027        | July 17, 1981.  |
| PA80-3074                      | Dec. 12, 1980.  |
| PA80-3056                      | Sept. 12, 1980. |
| Texas:                         |                 |
| TX80-4087                      | Nov. 7, 1980.   |
| TX81-4015                      | Apr. 3, 1981.   |
| TX81-4016                      | Apr. 3, 1981.   |
| TX81-4030                      | May 8, 1981.    |
| TX81-4032                      | May 8, 1981.    |
| TX81-4037                      | June 5, 1981.   |
| TX81-4038                      | June 5, 1981.   |
| TX81-4045                      | July 10, 1981.  |
| TX81-4048                      | July 10, 1981.  |
| Virginia:                      |                 |
| DC81-3040                      | June 5, 1981.   |
| VA81-3036                      | June 12, 1981.  |

Supersedeas Decisions to General Wage  
Determination Decisions

The numbers of the decisions being superseded and their dates of publication in the Federal Register are listed with each State. Superseded decision numbers are in parentheses following the numbers of the decisions being superseded.



Arizona: AZ81-5124 (AZ81- May 25, 1981.  
5142).  
Hawaii: HI81-5106 Mar. 6, 1981.  
(HI81-5141).  
Illinois:  
IL79-2035 (IL81-2052) May 11, 1979.  
IL81-2049 (IL81-2053) July 7, 1981.  
Indiana: IL81-2049 (IL81- July 7, 1981.  
2053).  
Kentucky:  
KY80-1096 (KY81-1276) Aug. 22, 1980.  
KY80-1097 (KY81-1275) Aug. 22, 1980.  
Maryland:  
MD77-3085 (MD81-3052) July 1, 1977.  
MD81-3004 (MD81-3056) Feb. 6, 1981.  
Michigan: IL81-2049 (IL81- July 7, 1981.  
2053).  
Minnesota: IL81-2049 (IL81- July 7, 1981.  
2053).  
New York: IL81-2049 (IL81- July 7, 1981.  
2053).  
Ohio: IL81-2049 (IL81-2053) July 7, 1981.  
Pennsylvania: IL81-2049 July 7, 1981.  
(IL81-2053).  
Wisconsin: IL81-2049 (IL81- July 7, 1981.  
2053).

#### Cancellation of General Wage Determination Decisions

None.

Signed at Washington, D.C., this 7th day of  
August 1981.

**Dorothy P. Come,**

*Assistant Administrator Wage and Hour  
Division.*

BILLING CODE 4510-27-M



DECISION NO. C881-5132 - Mod. #1

| Basic Hourly Rates                                                                                                                                                                                                                                                                                                                                                                                                                                          | Fringe Benefits Payments |          |          |  | Education and/or Appr. Tr. |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|----------|----------|--|----------------------------|
|                                                                                                                                                                                                                                                                                                                                                                                                                                                             | H & W                    | Pensions | Vacation |  |                            |
| Alameda, Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa, Del Norte, El Dorado, Fresno, Glenn, Humboldt, Kings, Lake, Lassen, Madera, Marin, Mariposa, Mendocino, Merced, Modoc, Monterey, Napa, Nevada, Placer, Plumas, Sacramento, San Benito, San Francisco, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Shasta, Sierra, Siskiyou, Solano, Sonoma, Stanislaus, Sutter, Tehama, Trinity, Tulare, Tuolumne, Yolo and Yuba Counties, California |                          |          |          |  |                            |
| Change: Plumbers; Steamfitters: Area 4                                                                                                                                                                                                                                                                                                                                                                                                                      | \$18.50                  | \$2.02   | \$2.89   |  | .18                        |
| Omit: Plumbers; Steamfitters: Area 4 - Descriptions                                                                                                                                                                                                                                                                                                                                                                                                         |                          |          |          |  |                            |
| Add: Plumbers; Steamfitters: Area 4 - Descriptions                                                                                                                                                                                                                                                                                                                                                                                                          |                          |          |          |  |                            |

Plumbers; Steamfitters:  
Area 4: Alpine County; Amador County (southern portion); Butte, Calaveras, Colusa, Fresno, Glenn, Kings, Lassen, Madera, Mariposa, Merced, Modoc, Monterey, Plumas, San Joaquin, Santa Cruz, Shasta, Sierra, Siskiyou, Stanislaus, Sutter, Tehama, Trinity, Tulare, Tuolumne, and Yuba Counties

DECISION NO. CT81-3032 - MOD. #3

| Basic Hourly Rates                                                                                                                   | Fringe Benefits Payments |                   |                     |             | Education and/or Appr. Tr. |
|--------------------------------------------------------------------------------------------------------------------------------------|--------------------------|-------------------|---------------------|-------------|----------------------------|
|                                                                                                                                      | H & W                    | Pensions          | Vacation            |             |                            |
| (46 FR 27040 - May 15, 1981)<br>Bartford, Middlesex, New Haven, New London and Tolland Counties, Connecticut                         |                          |                   |                     |             |                            |
| CHANGE:<br>ASBESTOS WORKERS:<br>Area 2                                                                                               | 13.50                    | 1.04              | 1.50                |             | .01                        |
| ELECTRICIANS:<br>Area 4                                                                                                              | 14.30                    | 1.25              | 38+2.60             |             | 1/8                        |
| PAINTERS:<br>Area 2:<br>Brush; Tapers<br>Paperhangers<br>Riding Steel; Steamcleaning; Sandblasting; Tank; Towers; and Hazardous Work | 12.15<br>12.65           | 1.20<br>1.20      | 1.10<br>1.10        |             |                            |
| Spray<br>PLUMBERS; STEAMFITTERS:<br>Area 2<br>Area 4<br>Area 6                                                                       | 12.73<br>15.15           | 1.20<br>1.20      | 1.10<br>1.10        |             |                            |
| ROOFERS:<br>Area 2:<br>Composition<br>Slate, Tile<br>STEAMFITTERS:<br>Area 1                                                         | 15.47<br>15.90<br>15.20  | .75<br>.75<br>.88 | 1.40<br>.80<br>1.10 | 0<br>0<br>0 | .05<br>.07<br>.05          |
|                                                                                                                                      | 12.05<br>12.55           | .675<br>.675      | .95<br>.95          |             |                            |
|                                                                                                                                      | 14.08                    | 1.16              | 1.51                |             | .13                        |



Modification Page 4

| DECISION NO. DC81-1191 - Mod. #3<br>(46 FR 15645 - March 6, 1981)<br>Clayton, Dekalb, & Fulton<br>Counties, Georgia<br><u>CHANGE:</u> | Fringe Benefits Payments |          |          |                                  | Basic<br>Hourly<br>Rates |
|---------------------------------------------------------------------------------------------------------------------------------------|--------------------------|----------|----------|----------------------------------|--------------------------|
|                                                                                                                                       | H & W                    | Pensions | Vacation | Education<br>and/or<br>Appr. Tr. |                          |
| Ironworkers                                                                                                                           | .70                      | .97      |          |                                  | \$12.90                  |
| Plumbers & Pipefitters                                                                                                                | 1.00                     | 1.10     |          |                                  | 13.60                    |
| Sheet metal workers                                                                                                                   | .70                      | .91      |          |                                  | 13.65                    |
| <u>CHANGE:</u>                                                                                                                        |                          |          |          |                                  |                          |
| DECISION #2481-1192 - Mod. #4<br>(46 FR 15647 - March 6, 1981)<br>Richmond County, Georgia<br><u>CHANGE:</u>                          |                          |          |          |                                  |                          |
| Asbestos workers                                                                                                                      | .45                      | .45      |          |                                  | \$12.35                  |
| Ironworkers                                                                                                                           | .70                      | 1.00     |          |                                  | 12.30                    |
| Painters:                                                                                                                             |                          |          |          |                                  |                          |
| Brush & Roller (9"): Power tools, sign painting, glazing, & structural steel (painting & cleaning) excluding metal doors & frames;    | .65                      | .45      |          |                                  | 8.65                     |
| Paper hangers:                                                                                                                        |                          |          |          |                                  |                          |
| Drywall finishers:                                                                                                                    | .65                      | .45      |          |                                  | 9.35                     |
| All type epoxy & chemical materials such as bitumastic, concrete, etc.:                                                               | .65                      | .45      |          |                                  | 9.60                     |
| All stage work, window jacks, bottom chair, ladder jacks & built-up scaffolds, & extension ladder over 36 feet;                       | .65                      | .45      |          |                                  | 10.10                    |
| Regular spray & gloves, & blasting                                                                                                    | .65                      | .45      |          |                                  | 10.50                    |
|                                                                                                                                       | .65                      | .45      |          |                                  | 10.75                    |

Modification Page 3

| DECISION NO. DC81-3040 -<br>MOD. #1<br>(46 FR 30290 - June 5, 1981)<br>DISTRICT OF COLUMBIA;<br>MARYLAND-MONTGOMERY AND<br>PRINCE GEORGES; AND D.C.<br>TRAINING SCHOOL; VIRGINIA-<br>INDEPENDENCE CITY OF<br>ALEXANDRIA; ARLINGTON AND<br>FAIRFAX COUNTIES<br><u>CHANGE:</u> | Fringe Benefits Payments |          |          |                                  | Basic<br>Hourly<br>Rates |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|----------|----------|----------------------------------|--------------------------|
|                                                                                                                                                                                                                                                                              | H & W                    | Pensions | Vacation | Education<br>and/or<br>Appr. Tr. |                          |
| PAVING AND INCIDENTAL<br>GRADING                                                                                                                                                                                                                                             | .35                      | .40      |          |                                  | 8.98                     |
| <u>CEMENT MASONS</u>                                                                                                                                                                                                                                                         |                          |          |          |                                  |                          |
| POWER EQUIPMENT OPERATORS:                                                                                                                                                                                                                                                   |                          |          |          |                                  |                          |
| Concrete Spreader                                                                                                                                                                                                                                                            |                          |          |          |                                  |                          |
| Operator, Finishing                                                                                                                                                                                                                                                          |                          |          |          |                                  |                          |
| Machine, Roller (rough),                                                                                                                                                                                                                                                     |                          |          |          |                                  |                          |
| Compressor Rubber-tired                                                                                                                                                                                                                                                      |                          |          |          |                                  |                          |
| Loader (1-1/4 cu. yds., or less), Asphalt plant                                                                                                                                                                                                                              | .35                      | .40      |          |                                  | 8.69                     |
| Mixer                                                                                                                                                                                                                                                                        |                          |          |          |                                  |                          |
| Loader Operator Tracks                                                                                                                                                                                                                                                       |                          |          |          |                                  |                          |
| (2-1/4 cu. yds. or less),                                                                                                                                                                                                                                                    |                          |          |          |                                  |                          |
| Bulldozer, Mechanic or                                                                                                                                                                                                                                                       |                          |          |          |                                  |                          |
| Welder, Rubber Tired                                                                                                                                                                                                                                                         |                          |          |          |                                  |                          |
| Loader (over 1-1/4 cu. yds.)                                                                                                                                                                                                                                                 | .35                      | .40      |          |                                  | 8.92                     |
| Asphalt Spreader, Hydraulic Backhoe (1/4 cu. yd., or less), Asphalt Plant                                                                                                                                                                                                    |                          |          |          |                                  |                          |
| Engineer, Asphalt Roller                                                                                                                                                                                                                                                     |                          |          |          |                                  |                          |
| Operator, Concrete                                                                                                                                                                                                                                                           | .35                      | .40      |          |                                  | 8.98                     |
| Breaker (machine)                                                                                                                                                                                                                                                            |                          |          |          |                                  |                          |
| Crane Operator, Concrete                                                                                                                                                                                                                                                     | .35                      | .40      |          |                                  | 9.15                     |
| Paving Operator                                                                                                                                                                                                                                                              | .35                      | .40      |          |                                  | 9.27                     |
| Shovel Operator                                                                                                                                                                                                                                                              |                          |          |          |                                  |                          |
| Gradall Operator (1-1/4 cu. yds. or less), Motor                                                                                                                                                                                                                             | .35                      | .40      |          |                                  | 10.01                    |
| Grader, Operator Tracks                                                                                                                                                                                                                                                      |                          |          |          |                                  |                          |
| over 2-1/4 cu. yds.                                                                                                                                                                                                                                                          | .35                      | .40      |          |                                  | 10.30                    |
| G-1000 Gradall Operator                                                                                                                                                                                                                                                      | .35                      | .40      |          |                                  | 10.30                    |
| (over 1 1/4 cu. yds.)                                                                                                                                                                                                                                                        | .35                      | .40      |          |                                  | 8.58                     |
| Power Broom                                                                                                                                                                                                                                                                  | .35                      | .40      |          |                                  | 8.98                     |
| Sand Setter                                                                                                                                                                                                                                                                  | .35                      | .40      |          |                                  |                          |



| DECISION NO. 1281-1193 - Mod. #1<br>(46 FR 15648 - March 6, 1981)<br>Chatham County, Georgia<br><br>CHANGE:<br>Cement masons<br>Ironworkers<br>Plasterers<br>Plumbers & Pipefitters:<br>Contracts \$20,000.00 or less<br>Contracts over \$20,000.00 | Basic<br>Hourly<br>Rates | Fringe Benefits Payments |            |          |  | Education<br>and/or<br>Appr. Tr. |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|--------------------------|------------|----------|--|----------------------------------|
|                                                                                                                                                                                                                                                     |                          | M & W                    | Pensions   | Vacation |  |                                  |
|                                                                                                                                                                                                                                                     | \$ 9.25<br>12.30<br>9.25 | .70                      | 1.00       |          |  | .03                              |
|                                                                                                                                                                                                                                                     | 12.55<br>13.20           | .70<br>.70               | .90<br>.90 |          |  | .05<br>.05                       |
| DECISION #2481-1194 - Mod. #2<br>(46 FR 15650 - March 6, 1981)<br>Houston County, Georgia<br><br>CHANGE:<br>Plumbers & Pipefitters                                                                                                                  | \$12.25                  | .87                      | .63        |          |  | .06                              |
| DECISION NO. 1280-1041, Mod. #4.<br>45 FR 51408 - August 1, 1980<br>Black Hawk Co., Iowa<br>Building Construction                                                                                                                                   |                          |                          |            |          |  |                                  |
| CHANGE:<br>Carpenters<br>Electricians                                                                                                                                                                                                               | \$11.89<br>15.04         | .90<br>.65               | 1.75<br>34 |          |  | .03<br>3/4 of 14                 |

| DECISION NO. 1281-1024 -<br>MOD. #6<br>(46 FR 24830 - May 1, 1981)<br>Statewide Louisiana<br><br>CHANGE:<br>Carpenters:<br>Zone 7:<br>Carpenters & soft floor<br>layers<br>Millwrights<br>Piledrivermen<br>Zone 9:<br>Carpenters & soft floor<br>layers<br>Millwrights<br>Piledrivermen<br>Electricians:<br>Zone 7 - Electricians<br>Cable splicers<br>Zone 8 - Electricians<br>Cable splicers<br>Glaziers - Zone 2<br>Zone 3<br>Line construction:<br>Zone 7:<br>Linemen, operators<br>Cable splicers<br>Groundmen | Basic<br>Hourly<br>Rates                           | Fringe Benefits Payments          |                             |          |  | Education<br>and/or<br>Appr. Tr.       |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------|-----------------------------------|-----------------------------|----------|--|----------------------------------------|
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                    | M & W                             | Pensions                    | Vacation |  |                                        |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | \$12.00<br>12.75<br>12.50                          |                                   |                             |          |  |                                        |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | 12.00<br>12.75<br>12.50                            |                                   |                             |          |  |                                        |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | 14.00<br>14.50<br>13.64<br>13.89<br>10.75<br>13.05 | 1.75<br>1.75<br>.60<br>.60<br>.32 | 34<br>34<br>34<br>34<br>.35 |          |  | 14<br>14<br>1/24<br>1/24<br>.01<br>.01 |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | 14.00<br>14.50<br>12.00                            | 1.75<br>1.75<br>1.75              | 34<br>34<br>34              |          |  | 3/48<br>3/48<br>3/48                   |
| DECISION NO. 1281-1027 -<br>MOD. #5<br>(46 FR 24834 - May 1, 1981)<br>Bossier, Caddo & Calcasieu<br>Parishes, Louisiana<br><br>CHANGE:<br>Electricians:<br>Bossier & Caddo Parishes<br>Electricians<br>Cable splicers                                                                                                                                                                                                                                                                                               | 14.00<br>14.50                                     | 1.75<br>1.75                      | 34<br>34                    |          |  | 14<br>14                               |



Modification Page 7

## DECISION NO. LA81-4046 -

MOD. #2

(45 FR 34974 - July 6, 1981)

Allen, Beuresgard, Bossier,  
Caddo, Calcasieu, Cameron,  
Jefferson, Jefferson Davis,  
Orleans, Plaquemines, St.  
Bernard & St. Charles  
Pars., Louisiana

## CHANGE:

## Electricians:

Zone 3 - Electricians  
Zone 3 - Cable splicers

## Line construction:

Zone 3 - Group 1  
Group 2  
Group 3

| Basic Hourly Rates | Fringe Benefits Payments |          |          |  | Education and/or App. Tr. |
|--------------------|--------------------------|----------|----------|--|---------------------------|
|                    | M & W                    | Pensions | Vacation |  |                           |
| \$14.00            | 1.75                     | 3%       |          |  | 1%                        |
| 14.50              | 1.75                     | 3%       |          |  | 1%                        |
| 14.00              | 1.75                     | 3%       |          |  | 3/4%                      |
| 14.50              | 1.75                     | 3%       |          |  | 3/4%                      |
| 12.00              | 1.75                     | 3%       |          |  | 3/4%                      |

Modification Page 8

## DECISION NO. MA80-2070 -

MOD. #1

(45 FR 57926 - August 29, 1980)

Berkshire, Franklin, Hampden,  
and Hampshire Counties,  
Massachusetts

## CHANGE:

ASBESTOS WORKERS  
BRICKLAYERS; Cement Mason,  
Plasterers, Stone Mason,  
Marble-Tile-Terrazzo  
Workers, Pointers, Clean-  
ers, Caulkers:  
HAMPTON, HAMPSHIRE,  
FRANKLIN COUNTIES:  
BERKSHIRE CO. (Types of  
Becket, Otis and Sandis-  
field only)

## ELECTRICIANS:

FRANKLIN COUNTY (Remainder  
of County): HAMPSHIRE CO.  
(Remainder of Co.): HAM-  
DEN CO. (Chester, Holyoke  
and North portion of  
Chicopee)

## ELECTRICIAL CONTRACTS

under \$85,000.00

## ELECTRICIAL CONTRACTS

over \$85,000.00

## MILLRIGHTS

## PAINTERS:

Brush and Taper

Spray and sandblasting

Swing Stage under 40'

Steel

Swing Stage over 40' Steel

SIGN PAINTERS

PLUMBERS:

FRANKLIN COUNTY (Orange

Only)

| Basic Hourly Rates | Fringe Benefits Payments |          |          |  | Education and/or App. Tr. |
|--------------------|--------------------------|----------|----------|--|---------------------------|
|                    | M & W                    | Pensions | Vacation |  |                           |
| 13.50              | 1.04                     | 1.50     |          |  | .01                       |
| 12.40              | 1.13                     | 1.30     |          |  | .06                       |
| 11.86              | .85                      | 3%+.40   |          |  | .02                       |
| 13.86              | .85                      | 3%+.40   |          |  | .02                       |
| 14.45              | 1.00                     | 1.00     |          |  | .10                       |
| 10.82              | .92                      | .93      |          |  | .08                       |
| 14.69              | .92                      | .93      |          |  | .08                       |
| 11.01              | .92                      | .93      |          |  | .08                       |
| 11.32              | .92                      | .93      |          |  | .08                       |
| 10.85              | 1.00                     | .50      |          |  | .04                       |
| 11.71              | .90                      | .90      | .4%      |  | .05                       |



DECISION NO. MA80-2070  
(Cont'd)

LABORERS: BERKSHIRE;  
FRANKLIN (except Orange  
and Worwick); HAMFORD AND  
HAMPSHIRE

|                                            | Basic<br>Monthly<br>Rates | Fringe Benefits Payments |          |          | Education<br>and/or<br>Appr. Tr. |
|--------------------------------------------|---------------------------|--------------------------|----------|----------|----------------------------------|
|                                            |                           | H & W                    | Pensions | Vacation |                                  |
| Class I                                    | 10.55                     |                          |          |          |                                  |
| Class II                                   | 10.80                     | .75                      | 1.10     |          | .10                              |
| Class III                                  | 11.30                     | .75                      | 1.10     |          | .10                              |
| Class IV                                   | 11.55                     | .75                      | 1.10     |          | .10                              |
| LABORERS: FRANKLIN (Orange<br>and Worwick) |                           |                          |          |          |                                  |
| Class I                                    | 10.80                     | .75                      | 1.10     |          | .10                              |
| Class II                                   | 11.05                     | .75                      | 1.10     |          | .10                              |
| Class III                                  | 11.55                     | .75                      | 1.10     |          | .10                              |
| Class IV                                   | 11.80                     | .75                      | 1.10     |          | .10                              |

Class I - Carpenter Tenders, Cement Finisher Tenders, Laborers,  
Wrecking Laborers

Class II - Asphalt Bakers, Fence and Guard Rail Erectors, Laser  
Beam Op., Mason Tender, Pipelayer, Pneumatic Drill Op.,  
Pneumatic Tool Op., Wagon Drill Op.

Class III - Air Track Op., Block Pavers, Rammers, Curb Setters

Class IV - Blasterers, Powdermen

DECISION NO. MA80-2070 -  
CONT'D

TRUCK DRIVERS

|           | Basic<br>Monthly<br>Rates | Fringe Benefits Payments |          |          | Education<br>and/or<br>Appr. Tr. |
|-----------|---------------------------|--------------------------|----------|----------|----------------------------------|
|           |                           | H & W                    | Pensions | Vacation |                                  |
| Class I   | 10.56                     | 1.10                     | 1.20     | a+b      |                                  |
| Class II  | 10.73                     | 1.10                     | 1.20     | a+b      |                                  |
| Class III | 10.80                     | 1.10                     | 1.20     | a+b      |                                  |
| Class IV  | 10.92                     | 1.10                     | 1.20     | a+b      |                                  |
| Class V   | 11.02                     | 1.10                     | 1.20     | a+b      |                                  |
| Class VI  | 11.31                     | 1.10                     | 1.20     | a+b      |                                  |
| Class VII | 11.60                     | 1.10                     | 1.20     | a+b      |                                  |

Class I - Station Wagons, Panel Trucks and Pickup Trucks

Class II - Two axle Equipment; Helpers on Low Bed When Assigned  
at the Discretion of the Employer, Warehousemen, Forklift Opera-  
tors

Class III - Three Axle Equipment and Firemen

Class IV - Four and Five Axle Equipment

Class V - Specialized Earth Moving Equipment under 35 tons other  
than Conventional type trucks, Low Bed, Vachual, Mechanics, Paving  
Restoration Equipment, Mechanics

Class VI - Specialized Earth Moving Equipment over 35 Tons

Class VII - Trailers for Earth Moving Equipment (Double Hookup)

FOOTES:

a. Paid Holidays: New Year's Day, Washington's Birthday, Patriot's  
Day, Memorial Day, Independence Day, Labor Day, Columbus Day,  
Veterans Day, Thanksgiving Day, and Christmas Day

b. Paid Vacation: 4 months to 1 year 1/4 day's pay per month; 1-5  
years - 1 week; 5-10 years - 2 weeks; 10 years or more - 3  
weeks. Employee must have received pay for 120 days during last  
year 4 employment.



## DECISION NO. NV81-5111 - Mod. #6

(46 FR 24837 - May 1, 1981)

Statewide (does not include the Nevada Test Site and Tonopah Test Range, and Highway Construction in Douglas County), Nevada

## Change:

Glaziers:

Area 1

Line Construction

Workers:

Area 2:

Groundman

Line Equipment

Operators

Linemen

Cable Splicers

Area 3:

Groundman

Line Equipment

Operators

Linemen

Cable Splicers

Mason Tenders:

Area 1

Plaster Tenders:

Area 1

| Basic Hourly Rates | Fringe Benefits Payments |          |          |  | Education and/or App. Tr. |
|--------------------|--------------------------|----------|----------|--|---------------------------|
|                    | H & W                    | Pensions | Vacation |  |                           |
| \$ 8.00            | .75                      | .40      |          |  | .08                       |
| 13.87              | 1.08                     | 1.50     |          |  | .11                       |
| 15.42              | 1.06                     | 1.58     |          |  |                           |
| 19.30              | 1.00                     |          |          |  |                           |
| 11.80              | 1.50                     | 1.50     | 2.75     |  | .13                       |
| 12.15              | 1.50                     | 1.50     | 2.75     |  | .13                       |
| 13.87              | 1.08                     | 1.50     |          |  |                           |
| 14.08              | .84                      | 1.47     |          |  |                           |
| 14.19              | .84                      | 1.47     |          |  |                           |
| 14.24              | .84                      | 1.47     |          |  |                           |
| 14.40              | .84                      | 1.47     |          |  |                           |
| 14.58              | .84                      | 1.47     |          |  |                           |

## DECISION #NV81-5103 - Mod. #6

(46 FR 11486-February 6, 1981)

Nevada Test Site in-

cluding Tonopah Test

Range in Clark, Lincoln,

and Nye Counties, Nevada

Change:

Cement Masons:

Cement Masons

Floor Finishing

Machine

Mason Tenders:

Truck Drivers:

Group 1

Group 2

Group 3

Group 4

Group 5

## DECISION NO. NV81-5102 - Mod. #5

(46 FR 11482 - February 6, 1981)

Clark County (does not

include the Nevada Test

Site), Nevada

Change:

Glaziers

Mason Tenders

Plaster Tenders

Roofers

| Basic Hourly Rates | Fringe Benefits Payments |          |          |  | Education and/or App. Tr. |
|--------------------|--------------------------|----------|----------|--|---------------------------|
|                    | H & W                    | Pensions | Vacation |  |                           |
| \$ 8.00            | .75                      | .40      |          |  | .08                       |
| 13.87              | 1.08                     | 1.50     |          |  | .11                       |
| 15.42              | 1.06                     | 1.58     |          |  |                           |
| 19.30              | 1.00                     |          |          |  |                           |
| 11.80              | 1.50                     | 1.50     | 2.75     |  | .13                       |
| 12.15              | 1.50                     | 1.50     | 2.75     |  | .13                       |
| 13.87              | 1.08                     | 1.50     |          |  |                           |
| 14.08              | .84                      | 1.47     |          |  |                           |
| 14.19              | .84                      | 1.47     |          |  |                           |
| 14.24              | .84                      | 1.47     |          |  |                           |
| 14.40              | .84                      | 1.47     |          |  |                           |
| 14.58              | .84                      | 1.47     |          |  |                           |



## DECISION NO. CHS1-2025 - MOD. #1

(45 FR 23124 - May 22, 1981)  
Ashabula, Cuyahoga, Lake,  
Lorain, Portage, Stark, & Summit  
Counties, Ohio

## CHANGE:

Glaziers:  
Portage, Stark, & Summit Cos.;  
Commercial  
Residential  
Painters:  
Portage & Summit Cos. (Up to &  
Incl. Ohio Turnpike);  
Brush; Rollers; & Paperhanger  
Structural Steel; Drywall  
Finishers & Tapers  
Spray

## DECISION NO. PAS1-3027

MOD. NO. 1  
(45 FR 37212 - July 17, 1981)  
Franklin County, Pennsylvania

## CHANGE:

Plumbers

## DECISION NO. PAS2-3074

MOD. NO. 7  
(45 FR 81981 - December 12,  
1980)  
Clinton, Centre, Huntingdon,  
Fulton & Mifflin Counties,  
Pennsylvania

## CHANGE:

Boilermakers  
Bricklayers & Stonemasons  
Zone II  
Carpenters & Soft Floor Layers  
Electricians:  
Zone III  
Plumbers & Steamfitters  
Zone III  
Sheet Metal Workers  
Zone I

| Basic<br>Hourly<br>Rates | Fringe Benefits Payments |          |          | Education<br>and/or<br>App. Tr. |
|--------------------------|--------------------------|----------|----------|---------------------------------|
|                          | H & W                    | Pensions | Vacation |                                 |
| \$14.08                  | 1.21                     | 1.17     | .20      | .08                             |
| 8.62                     | 1.14                     | .62      | .15      |                                 |
| 14.65                    | 1.07                     | .60      |          |                                 |
| 15.40                    | 1.07                     | .60      |          |                                 |
| 15.50                    | 1.07                     | .60      |          |                                 |
| \$13.30                  | 1.02                     | 1.00     |          | .11                             |
| \$16.67                  | 1.275                    | 1.00     |          | .02                             |
| 12.25                    | .55                      | .80      | 10%      |                                 |
| 12.25                    | .65                      | .80      |          |                                 |
| 11.50                    | .65                      | 30+1.00  | 1.00     | .02                             |
| 13.30                    | 1.02                     | 1.00     |          | .11                             |
| 13.21                    | .80                      | .86      |          | .04                             |

## DECISION NO. PAS2-3076

MOD. NO. 6  
(45 FR 60745 - September 12,  
1980)  
Lackawanna, Susquehanna, Wayne  
and Wyoming Counties, Pa.

## CHANGE:

BUILDING, HEAVY & HIGHWAY  
CONSTRUCTION  
Boilermakers  
Bricklayers & Stonemasons:  
Susquehanna & Wyoming Cos.  
Carpenters, Building  
Lackawanna, Susquehanna and  
Wayne Counties  
Wyoming County  
East of Susquehanna River  
West of Susquehanna River  
Electricians:  
West of Susquehanna River  
East of Susquehanna River  
Glaziers  
Ironworkers:  
Lackawanna, Wayne and  
Wyoming Counties:  
Structural & Ornamental  
Reinforcing  
Laborers, Building  
Southern part of Wyoming Co.  
Unskilled  
Semi skilled laborers; and  
other mechanical tool operation  
2" pump or under; handling &  
mixing of all material used  
by masons from stock pile to  
mason; non-metallic pipelayer  
and making of joints, clay,  
terra cotta, ironstone,  
vitrified concrete; handling  
of burning torches; asphalt  
or other hot materials;  
cement finisher and blasters'  
helpers  
Plasterers' tenders; blasters;  
wagon drill operators  
Mason tenders and scaffold  
builders

| Basic<br>Hourly<br>Rates | Fringe Benefits Payments |          |          | Education<br>and/or<br>App. Tr. |
|--------------------------|--------------------------|----------|----------|---------------------------------|
|                          | H & W                    | Pensions | Vacation |                                 |
| \$16.67                  | 1.275                    | 1.00     |          | .02                             |
| 12.80                    | 1.05                     | .95      |          |                                 |
| 13.01                    | .70                      | .50      |          | .05                             |
| 13.52                    | .70                      | .50      |          | .05                             |
| 12.89                    | .70                      | .90      |          | .05                             |
| 13.69                    | .65                      | 30+1.25  |          | .03                             |
| 12.95                    | .90                      | 30+1.60  | 1.00     | .10                             |
| 11.85                    | .70                      | 1.20     |          |                                 |
| 14.75                    | e                        |          |          | .10                             |
| 14.65                    | e                        |          |          | .10                             |
| 10.87                    | .80                      | 1.10     |          |                                 |
| 11.07                    | .80                      | 1.10     |          |                                 |
| 11.19                    | .80                      | 1.10     |          |                                 |
| 11.27                    | .80                      | 1.10     |          |                                 |



Modification Page 16

Page 2

DECISION NO. P480-1056  
MOD. NO. 5, CONT'D.

| Basic Hourly Rates                         | Fringe Benefits Payments |          |          |  | Education and/or Appr. Tr. |
|--------------------------------------------|--------------------------|----------|----------|--|----------------------------|
|                                            | H & W                    | Pensions | Vacation |  |                            |
| \$12.10                                    |                          | 1.30     |          |  |                            |
| Marble Setters                             |                          |          |          |  |                            |
| Millwrights:                               |                          |          |          |  |                            |
| Lackawanna, Susquehanna and Wayne Counties | .70                      | .50      |          |  | .05                        |
| Wyoming County:                            |                          |          |          |  |                            |
| East of Susquehanna River                  | .70                      | .50      |          |  | .05                        |
| Painters:                                  |                          |          |          |  |                            |
| Brush and Roller                           |                          | 1.20     |          |  |                            |
| Spray                                      |                          | 1.20     |          |  |                            |
| Steel                                      |                          | 1.20     |          |  |                            |
| Piledrivers                                |                          |          | d        |  | .13                        |
| Plumbers                                   | 3.13                     | 1.40     |          |  | .10                        |
| Sheet Metal Workers                        | .95                      | 1.55     |          |  | .04                        |
| Soft floor layers:                         | .80                      | .85      |          |  |                            |
| Lackawanna, Wayne and Susquehanna Counties |                          |          |          |  |                            |
| Pipe Fitters                               | .70                      | .50      |          |  | .05                        |
| Truck Drivers, Building                    | .70                      | .80      |          |  | .10                        |
| Class I                                    |                          |          |          |  |                            |
| Class II                                   |                          |          |          |  |                            |
| Class III                                  |                          |          |          |  |                            |

FOOTNOTE:  
e. Employer contributes \$2.95 to a combined Health and Welfare and Pension Fund.

Modification Page 15

| Basic Hourly Rates                                                                                                                                                                                                                                                                                      | Fringe Benefits Payments         |                                  |                          |  | Education and/or Appr. Tr.   |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------|----------------------------------|--------------------------|--|------------------------------|
|                                                                                                                                                                                                                                                                                                         | H & W                            | Pensions                         | Vacation                 |  |                              |
| DECISION NO. TX80-4087 - MOD. #4<br>(45 FR 74365 - November 7, 1980)<br>Gregg County, Texas                                                                                                                                                                                                             |                                  |                                  |                          |  |                              |
| CHANGE:<br>Carpenters:<br>Carpenters<br>Millwrights<br>Piledrivers                                                                                                                                                                                                                                      |                                  |                                  |                          |  | .015<br>.015<br>.015<br>.015 |
| DECISION NO. TX81-4015 - MOD. #6<br>(46 FR 20448 - April 3, 1981)<br>Jefferson & Orange Cos., Texas                                                                                                                                                                                                     |                                  |                                  |                          |  |                              |
| CHANGE:<br>Ironworkers                                                                                                                                                                                                                                                                                  | .80                              | 1.70                             |                          |  | .10                          |
| DECISION NO. TX81-4016 - MOD. #5<br>(46 FR 20450 - April 3, 1981)<br>Travis County, Texas                                                                                                                                                                                                               |                                  |                                  |                          |  |                              |
| CHANGE:<br>Elevator constructors:<br>Mechanics<br>Helpers<br>Helpers (Prob.)                                                                                                                                                                                                                            | 1.345<br>1.345<br>1.345<br>1.345 | 1.085<br>1.085<br>1.085<br>1.085 | a+b<br>a+b<br>a+b<br>a+b |  | .035<br>.035<br>.035<br>.035 |
| DECISION NO. TX81-4030 - MOD. #3<br>(46 FR 25984 - May 8, 1981)<br>Armstrong, Carson, Castro, Childress, Collingsworth, Dallam, Deaf Smith, Donley, Gray, Hansford, Hartley, Hemphill, Hutchinson, Lipscomb, Moore, Ochiltree, Oldham, Potter, Randall, Roberts, Sherman, Swisher & Wheeler Cos., Texas |                                  |                                  |                          |  |                              |
| CHANGE:<br>Cement masons                                                                                                                                                                                                                                                                                |                                  |                                  |                          |  | 12.70                        |



Modification Page 17

| DECISION NO. TX81-4032 -<br>MOD. #5<br>(46 FR 25981 - May 8, 1981)<br>Galveston & Harris Cos.,<br>Texas                                                                                                      | Basic<br>Hourly<br>Rates         | Fringe Benefits Payments     |                               |                   |  | Education<br>and/or<br>Appr. Tr. |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------|------------------------------|-------------------------------|-------------------|--|----------------------------------|
|                                                                                                                                                                                                              |                                  | H & W                        | Pensions                      | Vacation          |  |                                  |
| CHANGE:<br>Marble masons:<br>Galveston County<br>Terrazzo workers:<br>Galveston County<br>Tile setters:<br>Galveston County                                                                                  | \$13.76<br>13.76<br>13.76        |                              |                               |                   |  |                                  |
| DECISION NO. TX81-4037 -<br>MOD. #3<br>(46 FR 30284 - June 5,<br>1981)<br>Wichita County, Texas                                                                                                              |                                  |                              |                               |                   |  |                                  |
| CHANGE:<br>Plasterers                                                                                                                                                                                        | 12.75                            |                              |                               |                   |  | .01                              |
| DECISION NO. TX81-4018 -<br>MOD. #4<br>(46 FR 30287 - June 5,<br>1981)<br>Collin, Dallas, Denton,<br>Ellis, Grayson, Hood, Hunt,<br>Johnson, Kaufman, Palo<br>Pinto, Rockwall, Tarrant<br>& Wise Cos., Texas |                                  |                              |                               |                   |  |                                  |
| CHANGE:<br>Bricklayers & stonemasons-<br>Zone 2                                                                                                                                                              | 11.86                            | .67                          | .50                           |                   |  | .04                              |
| DECISION NO. TX81-4045 -<br>MOD. #1<br>(46 FR 35892 - July 10,<br>1981)<br>Bexar County, Texas                                                                                                               |                                  |                              |                               |                   |  |                                  |
| CHANGE:<br>Asbestos workers<br>Bricklayers & stonemasons<br>Elevator constructors:<br>Mechanics<br>Helpers<br>Helpers (Prob.)                                                                                | 14.70<br>12.78<br>13.43<br>50%JR | .80<br>.67<br>1.345<br>1.345 | 1.55<br>.30<br>1.085<br>1.085 | .25<br>a+b<br>a+b |  | .08<br>.05<br>.035<br>.035       |

Modification Page 18

| DECISION NO. TX81-4045 -<br>MOD. #1 (CONT'D)                                                                                               | Basic<br>Hourly<br>Rates  | Fringe Benefits Payments |                   |                   |  | Education<br>and/or<br>Appr. Tr. |
|--------------------------------------------------------------------------------------------------------------------------------------------|---------------------------|--------------------------|-------------------|-------------------|--|----------------------------------|
|                                                                                                                                            |                           | H & W                    | Pensions          | Vacation          |  |                                  |
| Marble setters<br>Terrazzo workers<br>Tile setters                                                                                         | \$11.62<br>11.62<br>11.62 | .67<br>.67<br>.67        | .30<br>.30<br>.30 | .25<br>.25<br>.25 |  |                                  |
| DECISION NO. TX81-4048 -<br>MOD. #2<br>(46 FR 35903 - July 10,<br>1981)<br>Bell, Bosque, Coryell,<br>Falls, Hill & McLennan<br>Cos., Texas |                           |                          |                   |                   |  |                                  |
| CHANGE:<br>Building Construction:<br>Electricians:<br>Zone 1:<br>Electricians<br>Cable splicers                                            | 12.50<br>13.50            | .60<br>.60               | .38<br>.38        |                   |  | 1/28<br>1/28                     |



Modification Page 19

SUPERSEDES DECISION

STATE: Arizona  
 COUNTY: Statewide  
 DECISION NUMBER: A281-5142  
 DATE: Date of Publication  
 Supersedes Decision No. A281-5124 dated May 25, 1981, in 46 FR 29160  
 DESCRIPTION OF WORK: Building Projects (does not include single family homes and apartments up to and including 4 stories), Heavy and Highway Projects

| Basic Hourly Rates                                                                                           | Fringe Benefits Payments |          |          |  | Education and/or App. Tr. |
|--------------------------------------------------------------------------------------------------------------|--------------------------|----------|----------|--|---------------------------|
|                                                                                                              | H & W                    | Pensions | Vacation |  |                           |
| DECISION NO. VA81-3036-MOD. 11                                                                               |                          |          |          |  |                           |
| (46 FR 31198-June 12, 1981)                                                                                  |                          |          |          |  |                           |
| York County, & the cities of Hampton, & Newport News (including Langley AFB, Fort Eustis & Fort Monroe), VA. |                          |          |          |  |                           |
| CHANGE:                                                                                                      |                          |          |          |  |                           |
| CLASSIFICATIONS AND WAGE RATES IN THE WATER AND SEWER LINE SCHEDULE                                          |                          |          |          |  |                           |
| LABORERS:                                                                                                    |                          |          |          |  |                           |
| UNSKILLED                                                                                                    |                          |          |          |  |                           |
| PIPELAYERS                                                                                                   |                          |          |          |  |                           |
| TRUCK DRIVERS                                                                                                |                          |          |          |  |                           |
| POWER EQUIPMENT OPERATORS:                                                                                   |                          |          |          |  |                           |
| BACKHOE                                                                                                      |                          |          |          |  |                           |
| LOADER                                                                                                       |                          |          |          |  |                           |

| Basic Hourly Rates         | Fringe Benefits Payments |          |          |      | Education and/or App. Tr. |
|----------------------------|--------------------------|----------|----------|------|---------------------------|
|                            | H & W                    | Pensions | Vacation |      |                           |
| ASBESTOS WORKERS:*         |                          |          |          |      |                           |
| Zone 1                     | \$15.44                  | .75      | \$ 1.45  |      | .03                       |
| Zone 2                     | 16.24                    | .75      | 1.45     |      | .03                       |
| Zone 3                     | 16.44                    | .75      | 1.45     |      | .03                       |
| Zone 4                     | 16.89                    | .75      | 1.45     |      | .03                       |
| Zone 5                     | 19.19                    | .75      | 1.45     |      | .03                       |
| Zone 6                     | 17.31                    | 1.30     | 1.25     | 1.00 | .04                       |
| BOILERMAKERS               |                          |          |          |      |                           |
| BRICKLAYERS; Stonemasons:* |                          |          |          |      |                           |
| Northern Area:*            |                          |          |          |      |                           |
| Zone A                     | 14.00                    | .90      | 1.10     |      | .18                       |
| Zone B                     | 15.12                    | .90      | 1.10     |      | .18                       |
| Zone C                     | 15.82                    | .90      | 1.10     |      | .18                       |
| Zone D                     | 16.32                    | .90      | 1.10     |      | .18                       |
| Zone E                     | 17.08                    | .90      | 1.10     |      | .18                       |
| Zone F                     | 18.20                    | .90      | 1.10     |      | .18                       |
| Southern Area:*            |                          |          |          |      |                           |
| Zone A:                    |                          |          |          |      |                           |
| Bricklayers; Stonemasons   | 13.68                    | 1.00     | .95      |      | .06                       |
| Manhole Builders           | 13.93                    | 1.00     | .95      |      | .06                       |
| Zone B:                    |                          |          |          |      |                           |
| Bricklayers; Stonemasons   | 14.05                    | 1.00     | .95      |      | .06                       |
| Manhole Builders           | 14.30                    | 1.00     | .95      |      | .06                       |
| Zone C:                    |                          |          |          |      |                           |
| Bricklayers; Stonemasons   | 14.43                    | 1.00     | .95      |      | .06                       |
| Manhole Builders           | 14.68                    | 1.00     | .95      |      | .06                       |
| Zone D:                    |                          |          |          |      |                           |
| Bricklayers; Stonemasons   | 15.18                    | 1.00     | .95      |      | .06                       |
| Manhole Builders           | 15.43                    | 1.00     | .95      |      | .06                       |

\*See AREA and ZONE Descriptions - Page 2



## AREA and ZONE DEFINITIONS

## ASBESTOS WORKERS:

- Zone 1: Area lying within 15 miles radius from the City Hall in Phoenix or Tucson
- Zone 2: Area lying beyond the limits of Zone 1 and within 30 miles radius from the City Hall in Phoenix or Tucson
- Zone 3: Area lying beyond the limits of Zone 2 and within 40 miles radius from the City Hall in Phoenix or Tucson
- Zone 4: Area lying beyond the limits of Zone 3 and within 50 miles radius from the City Hall in Phoenix or Tucson
- Zone 5: Area lying beyond the limits of Zone 4

## BRICKLAYERS: STONEMASONS:

Northern Area: Apache, Coconino and Gila Counties; Graham County (west and north of the San Francisco River to the Gila River); Greenlee County (west and north of the San Francisco River to the Gila River); Maricopa, Mohave, and Navajo Counties; Pinal County (north of a boundary line drawn west along the Gila River to the western city limits of Florence, a straight line from the extreme southwestern city limits of Florence to the extreme southern city limits of Coolidge, then a straight line to the extreme southern city limits of Casa Grande, with the line extending to the Maricopa/Pinal County Line); Yavapai, and Yuma Counties:

- ZONE A: 0-35 road miles from the City Hall in Phoenix
- ZONE B: 35-50 road miles from the City Hall in Phoenix
- ZONE C: 50-75 road miles from the City Hall in Phoenix
- ZONE D: 75-100 road miles from the City Hall in Phoenix
- ZONE E: 100-200 road miles from the City Hall in Phoenix
- ZONE F: 200 road miles and over from the City Hall in Phoenix

Southern Area: Cochise County; Graham County (east and south of the San Francisco River to the Gila River); Greenlee County (east and south of the San Francisco River to the Gila River); Pima County; Pinal County (south of a boundary line drawn west along the Gila River to the western city limits of Florence, a straight line from the extreme southwestern city limits of Florence to the extreme southern city limits of Coolidge, then a straight line to the extreme southern city limits of Casa Grande, with the line extending to the Maricopa/Pinal County Line); Santa Cruz Counties:

- Zone A: 0-15 road miles from Tucson City limits
- Zone B: 15-30 road miles from Tucson City limits
- Zone C: 30-40 road miles from Tucson City limits
- Zone D: Over 40 road miles from Tucson City limits

|                             | Basic Hourly Rates | Fringe Benefits Payments |          |          | Education and/or Appl. Tr. |
|-----------------------------|--------------------|--------------------------|----------|----------|----------------------------|
|                             |                    | M & H                    | Pensions | Vacation |                            |
| CARPENTERS:*                |                    |                          |          |          |                            |
| Northern Area:              |                    |                          |          |          |                            |
| Carpenters; Drywall         | \$15.06            | \$ 1.335                 | \$1.115  |          | .08                        |
| Applicator; Saw Filer;      |                    |                          |          |          |                            |
| Shingler                    |                    |                          |          |          |                            |
| Floorlayers (finish);       |                    |                          |          |          |                            |
| Millwrights                 | 15.405             | 1.335                    | 1.115    |          | .08                        |
| Central and Southern Areas: | 15.565             | 1.335                    | 1.115    |          | .08                        |
| Carpenters; Saw Filers      | 12.935             | 1.335                    | 1.115    |          | .08                        |
| Floorlayers (finish);       |                    |                          |          |          |                            |
| Millwrights                 | 13.28              | 1.335                    | 1.115    |          | .08                        |
| CEMENT MASONS:*             | 13.44              | 1.335                    | 1.115    |          | .08                        |
| Zone 1:                     |                    |                          |          |          |                            |
| Northern Area:              |                    |                          |          |          |                            |
| Cement Masons               | 15.035             | .95                      | 1.40     |          | .05                        |
| Concrete Troweling          |                    |                          |          |          |                            |
| Machine; Sawing and         |                    |                          |          |          |                            |
| Scoring Machine; Curb       |                    |                          |          |          |                            |
| and Cutter Machine          | 15.225             | .95                      | 1.40     |          | .05                        |
| Central & Southern Areas:   |                    |                          |          |          |                            |
| Cement Masons               | 12.91              | .95                      | 1.40     |          | .05                        |
| Concrete Troweling          |                    |                          |          |          |                            |
| Machine; Sawing and         |                    |                          |          |          |                            |
| Scoring Machine; Curb       |                    |                          |          |          |                            |
| and Cutter Machine          | 13.10              | .95                      | 1.40     |          | .05                        |
| Zone 2:                     |                    |                          |          |          |                            |
| Cement Masons               | 12.84              | 1.12                     | 1.30     |          | .05                        |
| Concrete Troweling          |                    |                          |          |          |                            |
| Machine; Sawing and         |                    |                          |          |          |                            |
| Scoring Machine; Curb       |                    |                          |          |          |                            |
| and Cutter Machine;         |                    |                          |          |          |                            |
| Clary and similar type      |                    |                          |          |          |                            |
| of power screed Operator    |                    |                          |          |          |                            |
| DRYWALL TAPERS:*            | 13.03              | 1.12                     | 1.30     |          | .05                        |
| Zone A                      |                    |                          |          |          |                            |
| Zone B                      | 13.30              | .60                      | .50      |          | .10                        |
| Zone C                      | 14.30              | .60                      | .50      |          | .10                        |
|                             | 15.80              | .60                      | .50      |          | .10                        |

\*See AREA and ZONE Descriptions - Page 4



## AREA and ZONE DEFINITIONS

## CARPENTERS:

Northern Area: Area north of a straight line drawn between a point 35 miles due north of the City Hall in Flagstaff and a point 35 miles due north of the City Hall in Kingman, extending to the Arizona/Nevada State Line on the west; and connecting to a point 35 miles due north of the City Hall in Holbrook, thence due east to the intersection of the Arizona/New Mexico State Line

Central and Southern Areas: All areas not included in the Northern Area

## CEMENT MASONS:

Zone 1: Apache, Coconino, and Gila Counties; Graham County (north of Sentinel-Casa Grande-Safford Line); Greenlee County (north of Sentinel-Casa Grande-Safford Line); Maricopa County (north of Sentinel-Casa Grande-Safford Line); Mohave, and Navajo Counties; Pinal County (north of Sentinel-Casa Grande-Safford Line); Yavapai and Yuma Counties

Northern Area: Area north of a straight line drawn between a point 35 miles due north of the City Hall in Flagstaff and a point 35 miles due north of the City Hall in Kingman, extending to the Arizona/Nevada State Line on the west and connecting to a point 35 miles due north of the City Hall in Holbrook, thence due east to the intersection of the Arizona/New Mexico State Line.

Central and Southern Areas: All Areas not included in the Northern Area.

Zone 2: Southern parts of Cochise, Graham, Greenlee, Maricopa, and Pinal Counties; Pima and Santa Cruz Counties

## DRYWALL TAPERS:

Zone A: 0-40 road miles from Courthouse in Phoenix; Also Luke and William Air Force Bases  
Zone B: 41-60 road miles from Courthouse in Phoenix  
Zone C: 61 road miles and over from Courthouse in Phoenix

|                                                | Basic Hourly Rate | Fringe Benefits Payments |          |          | Education and/or Appr. Tr. |
|------------------------------------------------|-------------------|--------------------------|----------|----------|----------------------------|
|                                                |                   | M & W                    | Pensions | Vacation |                            |
| ELECTRICIANS: *                                |                   |                          |          |          |                            |
| Area 1:                                        |                   |                          |          |          |                            |
| Electricians                                   | \$16.81           | .60                      | 38+.70   |          | 3/4%                       |
| Cable Splicers                                 | 18.16             | .60                      | 38+.70   |          | 3/4%                       |
| Area 2:                                        |                   |                          |          |          |                            |
| Electricians; Technicians; and Cable Splicers: |                   |                          |          |          |                            |
| Zone A:                                        | 16.00             | .96                      | 38+.93   |          | 1/2%                       |
| Zone B:                                        | 19.12             | .96                      | 38+.93   |          | 1/2%                       |
| Area 3:                                        |                   |                          |          |          |                            |
| Zone A:                                        |                   |                          |          |          |                            |
| Electricians; Technicians                      | 17.24             | .60                      | 11%      |          | 1%                         |
| Cable Splicers                                 | 17.49             | .60                      | 11%      |          | 1%                         |
| Zone B:                                        |                   |                          |          |          |                            |
| Electricians; Technicians                      | 18.74             | .60                      | 11%      |          | 1%                         |
| Cable Splicers                                 | 18.99             | .60                      | 11%      |          | 1%                         |
| Zone C:                                        |                   |                          |          |          |                            |
| Electricians; Technicians                      | 19.24             | .60                      | 11%      |          | 1%                         |
| Cable Splicers                                 | 19.49             | .60                      | 11%      |          | 1%                         |
| Zone D:                                        |                   |                          |          |          |                            |
| Electricians; Technicians                      | 20.24             | .60                      | 11%      |          | 1%                         |
| Cable Splicers                                 | 20.49             | .60                      | 11%      |          | 1%                         |
| Area 4:                                        |                   |                          |          |          |                            |
| Electricians                                   | 17.15             | .96                      | 38+.93   |          | .10                        |
| Area 5:                                        |                   |                          |          |          |                            |
| Zone A:                                        |                   |                          |          |          |                            |
| Electricians                                   | 16.44             | .60                      | 11%      |          | 1%                         |
| Cable Splicers                                 | 16.69             | .60                      | 11%      |          | 1%                         |
| Zone B:                                        |                   |                          |          |          |                            |
| Electricians                                   | 17.24             | .60                      | 11%      |          | 1/2%                       |
| Cable Splicers                                 | 17.49             | .60                      | 11%      |          | 1/2%                       |
| Zone C:                                        |                   |                          |          |          |                            |
| Electricians                                   | 17.94             | .60                      | 11%      |          | 1/2%                       |
| Cable Splicers                                 | 18.19             | .60                      | 11%      |          | 1/2%                       |
| Zone D:                                        |                   |                          |          |          |                            |
| Electricians                                   | 18.94             | .60                      | 11%      |          | 1/2%                       |
| Cable Splicers                                 | 19.19             | .60                      | 11%      |          | 1/2%                       |

\*See AREA and ZONE Descriptions - Pages 6 and 7



## AREA AND ZONE DEFINITIONS

## ELECTRICIANS:

Area 1: Apache County (north of Highway #66)

Area 2: Coconino County: Navajo County (north and west of a boundary line beginning at a point where Clear Creek crosses the Coconino/Navajo County Line and then extending in a northeasterly direction along Clear Creek and north-easterly to Cottonwood Wash, along Cottonwood Wash extending northeasterly to where it intersects the Navajo Indian Reservation, then easterly along the Navajo Indian Reservation boundary line to a point where it intersects the Navajo/Apache County Line):

Zone A: 5 miles north-south, east and west of the

Post Offices of Williams, Sedona, and Winslow

Zone B: Remainder of Area 2 not covered by Zone A

Area 3: Apache County (south of Highway #66); Gila County: Navajo County (south and east of a boundary beginning at a point where Clear Creek crosses the Coconino/Navajo County Line, then extending in a northeasterly direction along Clear Creek and northeasterly to Cottonwood Wash, along Cottonwood Wash extending northeasterly to where it intersects the Navajo Indian Reservation, then easterly along the Navajo Indian Reservation boundary line to a point where it intersects the Navajo/Apache County Line); Pinal County (north of the line, "First Standard Parallel South" and east of the line "Second Guide Meridian East"):

Zone A: Area within 16 road miles beginning where the Southern Pacific Railroad intersects Highway 60-70 at Kaiser Crossing; Area within 12 miles radius from the school in Lakeside, Arizona

Zone B: Area within 16-28 road miles from point where the Southern Pacific Railroad intersects Highway 60-70 at Kaiser Crossing

Zone C: Area within 28-46 road miles from point where the Southern Pacific Railroad intersects Highway 60-70 at Kaiser Crossing

Zone D: Area 46 road miles and over from point where the Southern Pacific Railroad intersects Highway 60-70 at Kaiser Crossing; Area over 12 miles radius from school in Lakeside, Arizona

## AREA AND ZONE DEFINITIONS (Cont'd)

## ELECTRICIANS: (Cont'd)

Area 4: Maricopa and Mohave Counties; Pinal County (north and west of the boundary line beginning at a point where the Papago Indian Reservation Road #15 crosses the Pima/Pinal County Line, then extending in a northeasterly direction on the Papago Indian Reservation Road #15 to the intersection with the Florence Canal, north and east on the Florence Canal to the intersection with the line, "Second Guide Meridian East", then north to the Pinal/Maricopa County Line); Yavapai County

Area 5: Cochise, Graham, Greenlee, and Pima Counties, Pinal County (south and east of the boundary line beginning at a point where the Papago Indian Reservation Road #15 crosses the Pima/Pinal County Line, then extending in a northeasterly direction on the Papago Indian Reservation Road #15 to the intersection with the Florence Canal, north and east on the Florence Canal to the intersection with the line, "Second Guide Meridian East", then north to the line, "First Standard Parallel South", and along that line to the Graham/Pinal County Line); Santa Cruz and Yuma Counties:

Zone A: Area within 16 miles radius from the City Hall in Tucson or Yuma; Area within 16 road miles from center of town in Douglas, Nogales or Sierra Vista; Area within the boundaries of the incorporated city limits of Parker, plus an area extending from the south city limits of Parker in a northeasterly direction to Milepost No. 150 located on State Highway #95, northeast of Parker from the Colorado River on the west, an area 1 mile wide paralleling the Colorado River

Zone B: Area lying beyond the limits of Zone A extending to and including 12 road miles excluding area near Douglas, Nogales and Sierra Vista

Zone C: Area lying beyond the limits of Zone B extending up to and including 18 road miles, excluding area near Douglas, Nogales and Sierra Vista

Zone D: Area lying beyond the limits of Zone C; for area near the Cities of Douglas, Nogales, Sierra Vista, the area lying beyond the limits of Zone A



| Basic<br>Hourly<br>Rates  | Fringe Benefits Payments |          |           |  | Education<br>and/or<br>Appr. Tr. |
|---------------------------|--------------------------|----------|-----------|--|----------------------------------|
|                           | H & W                    | Pensions | Vacations |  |                                  |
| \$15.69                   | \$1.195                  | .95      | a         |  | .035                             |
| 10.98                     | 1.195                    | .95      | a         |  | .035                             |
| 7.845                     |                          |          |           |  |                                  |
| GLAZIERS:                 |                          |          |           |  |                                  |
| Statewide excluding       |                          |          |           |  |                                  |
| Bullhead City             | 14.71                    | .95      | .60       |  | .08                              |
| Bullhead City             | 17.02                    | .75      | .40       |  | .08                              |
| IRONWORKERS:              |                          |          |           |  |                                  |
| Northern Area             | 18.40                    | 1.44     | 3.07      |  | .11                              |
| Southern Area             | 15.65                    | 1.44     | 3.07      |  | .11                              |
| LAYERS:                   |                          |          |           |  |                                  |
| Area 1                    | 14.235                   | 1.00     |           |  | .06                              |
| Area 2                    | 13.75                    | 1.00     |           |  | .06                              |
| LINE CONSTRUCTION:        |                          |          |           |  |                                  |
| Zone 1:                   |                          |          |           |  |                                  |
| Groundmen                 | 12.20                    | 1.00     | 342.00    |  | 1/24                             |
| Equipment Operators;      |                          |          |           |  |                                  |
| Powdermen; Mechanics      | 14.41                    | 1.00     | 342.00    |  | 1/24                             |
| Line men; Technicians;    |                          |          |           |  |                                  |
| Crane Operators           | 15.24                    | 1.00     | 342.00    |  | 1/24                             |
| Cable Splicers            | 16.71                    | 1.00     | 342.00    |  | 1/24                             |
| Zone 1-A:                 |                          |          |           |  |                                  |
| Groundmen                 | 13.20                    | 1.00     | 342.00    |  | 1/24                             |
| Equipment Operators;      |                          |          |           |  |                                  |
| Powdermen; Mechanics      | 15.32                    | 1.00     | 342.00    |  | 1/24                             |
| Line men; Technicians;    |                          |          |           |  |                                  |
| Crane Operators           | 17.22                    | 1.00     | 342.00    |  | 1/24                             |
| Cable Splicers            | 17.79                    | 1.00     | 342.00    |  | 1/24                             |
| Zone 2:                   |                          |          |           |  |                                  |
| Groundmen                 | 14.14                    | 1.00     | 342.00    |  | 1/24                             |
| Equipment Operators;      |                          |          |           |  |                                  |
| Powdermen; Mechanics      | 16.27                    | 1.00     | 342.00    |  | 1/24                             |
| Line men; Technicians     |                          |          |           |  |                                  |
| Crane Operators           | 18.16                    | 1.00     | 342.00    |  | 1/24                             |
| Cable Splicers            | 18.68                    | 1.00     | 342.00    |  | 1/24                             |
| MARBLE, TILE, and TERRAZO |                          |          |           |  |                                  |
| FINISHERS                 | 11.02                    | 1.19     | .30       |  | .10                              |

\*See AREA and ZONE Descriptions - Page 9

\*See AREA and ZONE  
Descriptions - Page 9

## AREA and TONE DEFINITIONS

## STEWARTSON

**Northern Area:** Area north from a line 10 miles north of and parallel to Highway #66, North to the Arizona-Utah border and from the Arizona-California border east to the Arizona-New Mexico border

Southern Area: All areas not included in the Northern Area

**LATHERS:**

Area 1: North of a line crossing the State drawn through Ajo, Randolph and Springville; except as follows: northeast of a line drawn from Springerville to a point 4 miles northeast of Keams Canyon

Area 2: South of a line crossing the State drawn through Ajo,  
Randolph and Springerville

**LINE CONSTRUCTION:**

Zone 1: Phoenix and Tucson 30 mile radius from the center of Town; Area within 10 mile radius from the City Hall of Tucson

Zone 1-A: Flagstaff, Globe, and Kingman; and 10 mile radius from the center of Town

Zone 2: Other Areas not covered by Zone 1 and Zone 1-A

SABSIINI



| Basic Hourly Rates | Fringe Benefits Payments |          |          | Education and/or Appr. Tr. |
|--------------------|--------------------------|----------|----------|----------------------------|
|                    | H & W                    | Pensions | Vacation |                            |
| \$13.06            | .90                      | \$ 1.10  |          | .19                        |
| 11.00              | 1.12                     | 1.30     |          | .06                        |
| 11.60              | .90                      | .80      |          | .20                        |
| 12.10              | .90                      | .80      |          | .20                        |
| 12.05              | .90                      | .80      |          | .20                        |
| 12.60              | .90                      | .80      |          | .20                        |
| 12.35              | .90                      | .80      |          | .20                        |
| 12.85              | .90                      | .80      |          | .20                        |
| 12.80              | .90                      | .80      |          | .20                        |
| 13.35              | .90                      | .80      |          | .20                        |
| 13.35              | .90                      | .80      |          | .20                        |
| 13.85              | .90                      | .80      |          | .20                        |
| 13.80              | .90                      | .80      |          | .20                        |
| 14.35              | .90                      | .80      |          | .20                        |
| 13.60              | .90                      | .80      |          | .20                        |
| 14.10              | .90                      | .80      |          | .20                        |
| 14.05              | .90                      | .80      |          | .20                        |
| 14.60              | .90                      | .80      |          | .20                        |
| 12.69              | .60                      | .60      |          | .10                        |
| 12.94              | .60                      | .60      |          | .10                        |
| 13.02              | .60                      | .60      |          | .10                        |
| 13.09              | .60                      | .60      |          | .10                        |
| 13.34              | .60                      | .60      |          | .10                        |
| 13.55              | .60                      | .60      |          | .10                        |

## MARBLE WORKERS:\*

## Area 1

## MASON TENDERS

## PAINTERS:\*

## Area 1:

## Zone A:

Brush; Soft Floor Layers

Brush; steel and bridge

Spray

Spray; steel and bridge

## Zone B:

Brush; Soft Floor Layers

Brush; steel and bridge

Spray

Spray; steel and bridge

## Zone C:

Brush; Soft Floor Layers

Brush; steel and bridge

Spray

Spray; steel and bridge

## Zone D:

Brush; Soft Floor Layers

Brush; steel and bridge

Spray

Spray; steel and bridge

## Area 2:

## Zone A:

Brush and Roller; Sand-

blaster (Nozzleman);

Sheetrock Taper; Floor

Coverer; Sandblaster

(Pot Tender)

Spray; Paperhanger

Creosote Applier

Swing Stage;

Brush; Sandblaster

Spray

Steeplejack

## \*See AREA and ZONE

Descriptions - Page 14

| Basic Hourly Rates | Fringe Benefits Payments |          |          | Education and/or Appr. Tr. |
|--------------------|--------------------------|----------|----------|----------------------------|
|                    | H & W                    | Pensions | Vacation |                            |
| \$13.62            | .60                      | .60      |          | .10                        |
| 13.82              | .60                      | .60      |          | .10                        |
| 13.69              | .60                      | .60      |          | .10                        |
| 13.94              | .60                      | .60      |          | .10                        |
| 14.02              | .60                      | .60      |          | .10                        |
| 14.09              | .60                      | .60      |          | .10                        |
| 14.34              | .60                      | .60      |          | .10                        |
| 14.55              | .60                      | .60      |          | .10                        |
| 14.62              | .60                      | .60      |          | .10                        |
| 14.82              | .60                      | .60      |          | .10                        |
| 15.19              | .60                      | .60      |          | .10                        |
| 15.44              | .60                      | .60      |          | .10                        |
| 15.52              | .60                      | .60      |          | .10                        |
| 15.59              | .60                      | .60      |          | .10                        |
| 15.84              | .60                      | .60      |          | .10                        |

## PAINTERS:\*

## Area 2: (Cont'd)

## Zone A: (Cont'd)

Steel and bridge, brush;

Nozzleman and Pot Ten-

der; Steel (steam

cleaner); Electric and

air tool Operator; Steel

Sandblaster

Steel and bridge, spray

## Zone B:

Brush and Roller; Sand-

blaster (Nozzleman);

Sheet Rock Taper;

Floor Coverer; Sand-

blaster (Pot Tender)

Spray; Paperhangers

Creosote Applier

Swing Stage;

Brush; Sandblaster

Spray

Steeplejack

Steel and bridge, brush;

Nozzleman and Pot Ten-

der; Steel (steam

cleaner); Electric and

air tool Operator; Steel

Sandblaster

Steel and bridge, spray

## Zone C:

Brush and Roller; Sand-

blaster (Nozzleman);

Sheet Rock Taper; Floor

Coverer; Sandblaster

(Pot Tender)

Spray; Paperhangers

Creosote Applier

Swing Stage;

Brush; Sandblaster

Spray

\*See AREA and ZONE  
Descriptions - Page 14



DECISION NO. A181-5142

Page 12

| Basic Hourly Rates        | Fringe Benefits Payments |          |          |  | Education and/or Appr. Tr. |
|---------------------------|--------------------------|----------|----------|--|----------------------------|
|                           | M & W                    | Pensions | Vacation |  |                            |
| PAINTERS: * (Cont'd)      |                          |          |          |  |                            |
| Area 2: (Cont'd)          |                          |          |          |  |                            |
| Zone C: (Cont'd)          |                          |          |          |  |                            |
| Steel and bridge, Brushy  |                          |          |          |  |                            |
| Nozzleman and Pot Ten-    |                          |          |          |  |                            |
| der; Steel (Steam         |                          |          |          |  |                            |
| cleaner); Electric air    |                          |          |          |  |                            |
| tool Operator; Steel      |                          |          |          |  |                            |
| Sandblaster; Steel        |                          |          |          |  |                            |
| Steel and bridge, Spray   |                          |          |          |  |                            |
| Area 3:                   |                          |          |          |  |                            |
| Zone A:                   |                          |          |          |  |                            |
| Brush                     |                          |          |          |  |                            |
| Spray; Sandblaster        |                          |          |          |  |                            |
| Paperhanger               |                          |          |          |  |                            |
| Swing Stage, under 40     |                          |          |          |  |                            |
| ft.:                      |                          |          |          |  |                            |
| Brush                     |                          |          |          |  |                            |
| Spray                     |                          |          |          |  |                            |
| Swing Stage, over 40 ft.: |                          |          |          |  |                            |
| Brush                     |                          |          |          |  |                            |
| Spray                     |                          |          |          |  |                            |
| Structural Steel and      |                          |          |          |  |                            |
| Tanks:                    |                          |          |          |  |                            |
| Brush                     |                          |          |          |  |                            |
| Spray                     |                          |          |          |  |                            |
| Swing Stage, over 40 ft.: |                          |          |          |  |                            |
| Zone B:                   |                          |          |          |  |                            |
| Brush                     |                          |          |          |  |                            |
| Spray and Sandblasters    |                          |          |          |  |                            |
| Brush                     |                          |          |          |  |                            |
| Spray and Sandblasters    |                          |          |          |  |                            |
| Paperhangers              |                          |          |          |  |                            |
| Swing Stage, under 40     |                          |          |          |  |                            |
| ft.:                      |                          |          |          |  |                            |
| Brush                     |                          |          |          |  |                            |
| Spray                     |                          |          |          |  |                            |
| Swing Stage, over 40 ft.: |                          |          |          |  |                            |
| Brush                     |                          |          |          |  |                            |
| Spray                     |                          |          |          |  |                            |
| Structural Steel and      |                          |          |          |  |                            |
| Tanks:                    |                          |          |          |  |                            |
| Brush                     |                          |          |          |  |                            |
| Spray and Sandblasters    |                          |          |          |  |                            |
| Brush                     |                          |          |          |  |                            |
| Spray                     |                          |          |          |  |                            |
| Swing Stage, over 40 ft.: |                          |          |          |  |                            |
| Brush                     |                          |          |          |  |                            |
| Spray                     |                          |          |          |  |                            |
| Structural Steel and      |                          |          |          |  |                            |
| Tanks:                    |                          |          |          |  |                            |
| Brush                     |                          |          |          |  |                            |
| Spray and Sandblasters    |                          |          |          |  |                            |

\*See AREA and ZONE  
Descriptions -Page 14

DECISION NO. A181-5142

Page 13

| Basic Hourly Rates          | Fringe Benefits Payments |          |          | Education and/or Appr. Tr. |
|-----------------------------|--------------------------|----------|----------|----------------------------|
|                             | M & W                    | Pensions | Vacation |                            |
| PAINTERS: * (Cont'd)        |                          |          |          |                            |
| Area 3: (Cont'd)            |                          |          |          |                            |
| Zone C:                     |                          |          |          |                            |
| Brush                       |                          |          |          |                            |
| Spray                       |                          |          |          |                            |
| Paperhangers                |                          |          |          |                            |
| Swing Stage, under 40 ft.:  |                          |          |          |                            |
| Brush                       |                          |          |          |                            |
| Spray                       |                          |          |          |                            |
| Swing Stage, over 40 ft.:   |                          |          |          |                            |
| Brush                       |                          |          |          |                            |
| Spray                       |                          |          |          |                            |
| Structural Steel and Tanks: |                          |          |          |                            |
| Brush                       |                          |          |          |                            |
| Spray and Sandblasters      |                          |          |          |                            |
| Zone D:                     |                          |          |          |                            |
| Brush                       |                          |          |          |                            |
| Spray                       |                          |          |          |                            |
| Paperhangers                |                          |          |          |                            |
| Swing Stage, under 40 ft.:  |                          |          |          |                            |
| Brush                       |                          |          |          |                            |
| Spray                       |                          |          |          |                            |
| Swing Stage, over 40 ft.:   |                          |          |          |                            |
| Brush                       |                          |          |          |                            |
| Spray                       |                          |          |          |                            |
| Swing Stage, over 40 ft.:   |                          |          |          |                            |
| Brush                       |                          |          |          |                            |
| Spray                       |                          |          |          |                            |
| Swing Stage, over 40 ft.:   |                          |          |          |                            |
| Brush                       |                          |          |          |                            |
| Spray                       |                          |          |          |                            |
| Swing Stage, over 40 ft.:   |                          |          |          |                            |
| Brush                       |                          |          |          |                            |
| Spray                       |                          |          |          |                            |
| Swing Stage, over 40 ft.:   |                          |          |          |                            |
| Brush                       |                          |          |          |                            |
| Spray                       |                          |          |          |                            |
| Swing Stage, over 40 ft.:   |                          |          |          |                            |
| Brush                       |                          |          |          |                            |
| Spray                       |                          |          |          |                            |
| Swing Stage, over 40 ft.:   |                          |          |          |                            |
| Brush                       |                          |          |          |                            |
| Spray                       |                          |          |          |                            |
| Swing Stage, over 40 ft.:   |                          |          |          |                            |
| Brush                       |                          |          |          |                            |
| Spray                       |                          |          |          |                            |
| Swing Stage, over 40 ft.:   |                          |          |          |                            |
| Brush                       |                          |          |          |                            |
| Spray                       |                          |          |          |                            |
| Swing Stage, over 40 ft.:   |                          |          |          |                            |
| Brush                       |                          |          |          |                            |
| Spray                       |                          |          |          |                            |
| Swing Stage, over 40 ft.:   |                          |          |          |                            |
| Brush                       |                          |          |          |                            |
| Spray                       |                          |          |          |                            |
| Swing Stage, over 40 ft.:   |                          |          |          |                            |
| Brush                       |                          |          |          |                            |
| Spray                       |                          |          |          |                            |
| Swing Stage, over 40 ft.:   |                          |          |          |                            |
| Brush                       |                          |          |          |                            |
| Spray                       |                          |          |          |                            |
| Swing Stage, over 40 ft.:   |                          |          |          |                            |
| Brush                       |                          |          |          |                            |
| Spray                       |                          |          |          |                            |
| Swing Stage, over 40 ft.:   |                          |          |          |                            |
| Brush                       |                          |          |          |                            |
| Spray                       |                          |          |          |                            |
| Swing Stage, over 40 ft.:   |                          |          |          |                            |
| Brush                       |                          |          |          |                            |
| Spray                       |                          |          |          |                            |
| Swing Stage, over 40 ft.:   |                          |          |          |                            |
| Brush                       |                          |          |          |                            |
| Spray                       |                          |          |          |                            |
| Swing Stage, over 40 ft.:   |                          |          |          |                            |
| Brush                       |                          |          |          |                            |
| Spray                       |                          |          |          |                            |
| Swing Stage, over 40 ft.:   |                          |          |          |                            |
| Brush                       |                          |          |          |                            |
| Spray                       |                          |          |          |                            |
| Swing Stage, over 40 ft.:   |                          |          |          |                            |
| Brush                       |                          |          |          |                            |
| Spray                       |                          |          |          |                            |
| Swing Stage, over 40 ft.:   |                          |          |          |                            |
| Brush                       |                          |          |          |                            |
| Spray                       |                          |          |          |                            |
| Swing Stage, over 40 ft.:   |                          |          |          |                            |
| Brush                       |                          |          |          |                            |
| Spray                       |                          |          |          |                            |
| Swing Stage, over 40 ft.:   |                          |          |          |                            |
| Brush                       |                          |          |          |                            |
| Spray                       |                          |          |          |                            |
| Swing Stage, over 40 ft.:   |                          |          |          |                            |
| Brush                       |                          |          |          |                            |
| Spray                       |                          |          |          |                            |
| Swing Stage, over 40 ft.:   |                          |          |          |                            |
| Brush                       |                          |          |          |                            |
| Spray                       |                          |          |          |                            |
| Swing Stage, over 40 ft.:   |                          |          |          |                            |
| Brush                       |                          |          |          |                            |
| Spray                       |                          |          |          |                            |
| Swing Stage, over 40 ft.:   |                          |          |          |                            |
| Brush                       |                          |          |          |                            |
| Spray                       |                          |          |          |                            |
| Swing Stage, over 40 ft.:   |                          |          |          |                            |
| Brush                       |                          |          |          |                            |
| Spray                       |                          |          |          |                            |
| Swing Stage, over 40 ft.:   |                          |          |          |                            |
| Brush                       |                          |          |          |                            |
| Spray                       |                          |          |          |                            |
| Swing Stage, over 40 ft.:   |                          |          |          |                            |
| Brush                       |                          |          |          |                            |
| Spray                       |                          |          |          |                            |
| Swing Stage, over 40 ft.:   |                          |          |          |                            |
| Brush                       |                          |          |          |                            |
| Spray                       |                          |          |          |                            |
| Swing Stage, over 40 ft.:   |                          |          |          |                            |
| Brush                       |                          |          |          |                            |
| Spray                       |                          |          |          |                            |
| Swing Stage, over 40 ft.:   |                          |          |          |                            |
| Brush                       |                          |          |          |                            |
| Spray                       |                          |          |          |                            |
| Swing Stage, over 40 ft.:   |                          |          |          |                            |
| Brush                       |                          |          |          |                            |
| Spray                       |                          |          |          |                            |
| Swing Stage, over 40 ft.:   |                          |          |          |                            |
| Brush                       |                          |          |          |                            |
| Spray                       |                          |          |          |                            |
| Swing Stage, over 40 ft.:   |                          |          |          |                            |
| Brush                       |                          |          |          |                            |
| Spray                       |                          |          |          |                            |
| Swing Stage, over 40 ft.:   |                          |          |          |                            |
| Brush                       |                          |          |          |                            |
| Spray                       |                          |          |          |                            |
| Swing Stage, over 40 ft.:   |                          |          |          |                            |
| Brush                       |                          |          |          |                            |
| Spray                       |                          |          |          |                            |
| Swing Stage, over 40 ft.:   |                          |          |          |                            |
| Brush                       |                          |          |          |                            |
| Spray                       |                          |          |          |                            |
| Swing Stage, over 40 ft.:   |                          |          |          |                            |
| Brush                       |                          |          |          |                            |
| Spray                       |                          |          |          |                            |
| Swing Stage, over 40 ft.:   |                          |          |          |                            |
| Brush                       |                          |          |          |                            |
| Spray                       |                          |          |          |                            |
| Swing Stage, over 40 ft.:   |                          |          |          |                            |
| Brush                       |                          |          |          |                            |
| Spray                       |                          |          |          |                            |
| Swing Stage, over 40 ft.:   |                          |          |          |                            |
| Brush                       |                          |          |          |                            |
| Spray                       |                          |          |          |                            |
| Swing Stage, over 40 ft.:   |                          |          |          |                            |
| Brush                       |                          |          |          |                            |
| Spray                       |                          |          |          |                            |
| Swing Stage, over 40 ft.:   |                          |          |          |                            |
| Brush                       |                          |          |          |                            |
| Spray                       |                          |          |          |                            |
| Swing Stage, over 40 ft.:   |                          |          |          |                            |
| Brush                       |                          |          |          |                            |
| Spray                       |                          |          |          |                            |
| Swing Stage, over 40 ft.:   |                          |          |          |                            |
| Brush                       |                          |          |          |                            |
| Spray                       |                          |          |          |                            |
| Swing Stage, over 40 ft.:   |                          |          |          |                            |
| Brush                       |                          |          |          |                            |
| Spray                       |                          |          |          |                            |
| Swing Stage, over 40 ft.:   |                          |          |          |                            |
| Brush                       |                          |          |          |                            |
| Spray                       |                          |          |          |                            |
| Swing Stage, over 40 ft.:   |                          |          |          |                            |
| Brush                       |                          |          |          |                            |
| Spray                       |                          |          |          |                            |
| Swing Stage, over 40 ft.:   |                          |          |          |                            |
| Brush                       |                          |          |          |                            |
| Spray                       |                          |          |          |                            |
| Swing Stage, over 40 ft.:   |                          |          |          |                            |
| Brush                       |                          |          |          |                            |
| Spray                       |                          |          |          |                            |
| Swing Stage, over 40 ft.:   |                          |          |          |                            |
| Brush                       |                          |          |          |                            |
| Spray                       |                          |          |          |                            |
| Swing Stage, over 40 ft.:   |                          |          |          |                            |
| Brush                       |                          |          |          |                            |
| Spray                       |                          |          |          |                            |
| Swing Stage, over 40 ft.:   |                          |          |          |                            |
| Brush                       |                          |          |          |                            |



## AREA and ZONE DEFINITIONS

## MARBLE WORKERS:

Area 1: Apache, Coconino, and Gila Counties; Graham County (west and north of San Francisco River to Gila River); Greenlee County (west and north of San Francisco River to Gila River); Maricopa, Mohave, and Navajo Counties; Pinal County (north of a boundary line drawn west along the Gila River to the western city limits of Florence, a straight line from the extreme southwestern city limits of Florence to the extreme southern city limits of Coolidge, then a straight line to the extreme southern city limits of Casa Grande with the line extending to the Maricopa/Pinal County Line); Yavapai and Yuma Counties

## PAINTERS:

Area 1: Apache, Coconino, Navajo, and Yavapai Counties (north of Woodruff/Camp Wood Line); Mohave County (north of a line following the Geodetic Hualapai Boundary Line to the Colorado River, a distance of 23 miles east of Pierce Ferry and then intersecting the Arizona/Nevada State Line);

Zone A: 0-20 road miles from Courthouse in Flagstaff  
 Zone B: 20-35 road miles from Courthouse in Flagstaff  
 Zone C: 35-80 road miles from Courthouse in Flagstaff  
 Zone D: 80 road miles and over from Courthouse in Flagstaff

Area 2: Apache, Coconino, Navajo, and Yavapai Counties (south of the Woodruff/Camp Wood Line); Gila, Graham, Greenlee, Maricopa, and Pinal Counties (north of 33rd Parallel); Mohave County (south of a line following the Geodetic Hualapai Boundary Line to the Colorado River, a distance of 23 miles east of Pierce Ferry and then intersecting the Arizona/Nevada State Line);

Zone A: 0-40 paved road miles from Courthouse in Phoenix; also, Luke and Williams Air Force Bases

Zone B: 41-60 paved road miles from Courthouse in Phoenix

Zone C: 61 paved road miles and over from Courthouse in Phoenix

Area 3: Cochise County; Graham, Greenlee, Maricopa and Pinal Counties (south of 33rd Parallel); Pima, Santa Cruz, and Yuma Counties:

Zone A: 0-30 paved road miles from Stone and Congress

Zone B: 31-40 paved road miles from Stone and Congress in Tucson or from the County Courthouse in Yuma

Zone C: 41-50 paved road miles from Stone and Congress in Tucson or from the County Courthouse in Yuma

Zone D: 51 paved road miles and over from Stone and Congress in Tucson or from the County Courthouse in Yuma

|                                                                            | Basic Hourly Rates | Fringe Benefits Payments |          |          | Education and/or Appr. Tr. |
|----------------------------------------------------------------------------|--------------------|--------------------------|----------|----------|----------------------------|
|                                                                            |                    | H & W                    | Pensions | Vacation |                            |
| <b>PLASTERERS:*</b>                                                        |                    |                          |          |          |                            |
| Area 1:                                                                    | \$11.77            | .95                      | \$1.30   |          | .06                        |
| Zone A                                                                     | 12.52              | .95                      | 1.30     |          | .06                        |
| Zone B                                                                     | 13.645             | .95                      | 1.30     |          | .06                        |
| Area 2:                                                                    |                    |                          |          |          |                            |
| Zone A                                                                     | 12.67              | 1.02                     | 1.20     |          | .10                        |
| Zone B                                                                     | 13.92              | 1.02                     | 1.20     |          | .10                        |
| Zone C                                                                     | 14.67              | 1.02                     | 1.20     |          | .10                        |
| <b>PLASTER TENDERS</b>                                                     |                    |                          |          |          |                            |
| Zone 1                                                                     | 15.49              | .75                      | 1.35     |          | .13                        |
| Zone 2                                                                     | 15.89              | .75                      | 1.35     |          | .13                        |
| Zone 3                                                                     | 16.34              | .75                      | 1.35     |          | .13                        |
| Zone 4                                                                     | 17.84              | .75                      | 1.35     |          | .13                        |
| <b>ROOFERS:*</b>                                                           |                    |                          |          |          |                            |
| Area 1:                                                                    | 13.46              | 1.095                    | .95      |          | .05                        |
| Area 2:                                                                    |                    |                          |          |          |                            |
| Zone A: Roofers and Water-Proofers; Shinglers (asbestos, wood and asphalt) | 11.67              | 1.095                    | .35      |          | .03                        |
| Zone B: Pitch and Enamel                                                   | 13.67              | 1.095                    | .35      |          | .03                        |
| Area 3: Roofers and Water-Proofers; Shinglers (asbestos, wood and asphalt) | 14.17              | 1.095                    | .35      |          | .03                        |
| Area 4: Pitch and Enamel                                                   | 16.17              | 1.095                    | .35      |          | .03                        |
| <b>SHEET METAL WORKERS:*</b>                                               |                    |                          |          |          |                            |
| Area 1:                                                                    |                    |                          |          |          |                            |
| Zone 1                                                                     | 16.39              | 1.10                     | 1.92     |          | .13                        |
| Zone 2                                                                     | 17.64              | 1.10                     | 1.92     |          | .13                        |
| Zone 3                                                                     | 20.39              | 1.10                     | 1.92     |          | .13                        |
| Area 2:                                                                    |                    |                          |          |          |                            |
| Zone A                                                                     | 15.65              | 1.20                     | 1.92     |          | .07                        |
| Zone B                                                                     | 16.86              | 1.20                     | 1.92     |          | .07                        |
| Zone C                                                                     | 19.53              | 1.20                     | 1.92     |          | .07                        |
| <b>SOFT FLOOR LAYERS</b>                                                   | 12.46              | .60                      | .12      |          | .21                        |
| <b>SPRINKLER FITTERS</b>                                                   | 16.65              | .95                      | 1.40     |          | .08                        |
| <b>TERRAZZO WORKERS; TILE SETTERS:*</b>                                    |                    |                          |          |          |                            |
| Area 1                                                                     | 13.06              | .90                      | 1.10     |          | .19                        |

\*See AREA and ZONE Descriptions - Pages 16 and 17



## FOOTNOTES:

- a. Employer contributes 8% of basic hourly rate for 5 years' service and 6% of basic hourly rate for 6 months' to 5 years' service as Vacation Pay Credit. Seven Paid Holidays: A through G

## PAID HOLIDAYS:

A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Friday after Thanksgiving; G-Christmas Day

## AREA AND ZONE DEFINITIONS

## PLASTERERS:

Area 1: Apache, Coconino, and Gila Counties; Graham, Greenlee, Maricopa, and Pinal Counties (north of Sentinel - Casa Grande - Safford Line); Mohave, Navajo, Yavapai, and Yuma Counties;  
 Zone A: 0-35 miles from Phoenix  
 Zone B: 35-60 miles from Phoenix  
 Zone C: 60 miles and over from Phoenix

Area 2: Cochise County; Graham, Greenlee, Maricopa, and Pinal Counties (south of Sentinel - Casa Grande - Safford Line); Santa Cruz County;

Zone A: 0-30 miles radius from Tucson  
 Zone B: 30-50 miles radius from Tucson  
 Zone C: 50 miles radius and over from Tucson

## PLUMBERS:

Zone 1: Area within 15 road miles from either the intersection of Central Avenue and Jefferson Street in Phoenix or the Old Main Building of the University of Arizona in Tucson or the Main Post Office Building in either Douglas, Flagstaff or Yuma; Also, all areas within the City limits of Navasu City, Holbrook, Kingman, Prescott, and Winslow; Also, that area bordered by the Apache Trail on the north, Bigley Road on the east, Elliott Road on the south and Arizona Avenue on the west

Zone 2: Over 15 and up to 30 road miles from either the intersection of Central Avenue and Jefferson Street in Phoenix or the Old Main Building of the University of Arizona in Tucson

## PLUMBERS: (Cont'd)

Zone 3: Over 30 and up to 40 road miles from either the intersection of Central Avenue and Jefferson Street in Phoenix or the Old Main Building of the University of Arizona in Tucson

Zone 4: Over 40 road miles from either the intersection of Central Avenue and Jefferson Street in Phoenix or the Old Main Building of the University of Arizona in Tucson

## ROOFERS:

Area 1: Apache, Coconino, Gila, Maricopa, Mohave, Navajo, Pinal, Yavapai, and Yuma Counties

Area 2: Cochise, Graham, Greenlee, Pima and Santa Cruz Counties;  
 Zone A: Area less than 44 road miles from City Hall in Tucson

Zone B: Area from 44 to 100 road miles from City Hall in Tucson

## SHEET METAL WORKERS:

Area 1: Apache, Coconino, and Gila Counties; Graham, Greenlee, and Pinal Counties (north of 33rd Parallel); Maricopa, Mohave, Navajo, Yavapai, and Yuma Counties;

Zone 1: 0-25 miles radius, excluding Luke and Williams Air Force Bases, from the following base points: the intersection of 56th Street and Indian School Road in Phoenix, and the City Hall in Flagstaff, Kingman, Prescott and Yuma

Zone 2: 25-50 miles radius from the base points listed in Zone 1; also Luke and Williams Air Force Bases

Zone 3: 50 miles radius and over from the base points listed in Zone 1

Area 2: Cochise, Graham, Greenlee, and Pinal Counties (south of 33rd Parallel); Pima and Santa Cruz Counties;

Zone A: 0-25 miles radius from Tucson City Hall or Douglas City Hall

Zone B: 25-50 miles radius from Tucson City Hall or Douglas City Hall

Zone C: Over 50 miles radius from Tucson City Hall or Douglas City Hall; also San Manuel and vicinity

## TERRAZZO WORKERS; TILE SETTERS:

Area 1: Apache, Coconino, and Gila Counties; Graham and Greenlee Counties (west and north of San Francisco River to Gila River); Maricopa, Mohave, and Navajo Counties; Pinal County (north of a boundary line drawn west along the Gila River to the western City limits of Florence, a straight line from the extreme southwestern City limits of Florence to the extreme southern city limits of Coolidge, then a straight line to the extreme southern city limits of Casa Grande, with the line extending to the Maricopa/Pinal County line); Yavapai and Yuma Counties



## LABORERS:

|                         | Basic Hourly Rates | C and S AREAS | Fringe Benefits Payments |          |          | Education and/or Adv. Tr. |
|-------------------------|--------------------|---------------|--------------------------|----------|----------|---------------------------|
|                         |                    |               | N & W                    | Pensions | Vacation |                           |
| Group 1                 | \$12.275           | \$10.15       | \$1.12                   | \$1.30   |          | .10                       |
| Group 2                 | 12.435             | 10.31         | 1.12                     | 1.30     |          | .10                       |
| Group 3                 | 12.605             | 10.48         | 1.12                     | 1.30     |          | .10                       |
| Group 4                 | 12.735             | 10.61         | 1.12                     | 1.30     |          | .10                       |
| Group 5                 | 12.945             | 10.82         | 1.12                     | 1.30     |          | .10                       |
| Group 6                 | 13.41              | 11.285        | 1.12                     | 1.30     |          | .10                       |
| Group 7                 | 14.18              | 12.055        | 1.12                     | 1.30     |          | .10                       |
| (Tunnel and Shaft Work) |                    |               |                          |          |          |                           |
| Group 1                 | 12.57              | 10.445        | 1.12                     | 1.30     |          | .10                       |
| Group 2                 | 12.775             | 10.65         | 1.12                     | 1.30     |          | .10                       |
| Group 3                 | 12.935             | 10.81         | 1.12                     | 1.30     |          | .10                       |
| Group 4                 | 13.365             | 11.24         | 1.12                     | 1.30     |          | .10                       |
| Group 5                 | 13.60              | 11.475        | 1.12                     | 1.30     |          | .10                       |
| Group 5-A               | 13.90              | 11.775        | 1.12                     | 1.30     |          | .10                       |

## AREA DEFINITIONS

## NORTHERN AREA:

Area north of a straight line drawn between a point 35 miles due north of the City Hall in Flagstaff and a point 35 miles due north of the City Hall in Kingman, extending to the Arizona/Nevada State Line on the west; and connecting to a point 35 miles due north of the City Hall in Holbrook, thence due east to the intersection of the Arizona/New Mexico State Line

## CENTRAL and SOUTHERN AREAS:

All Areas not included in the Northern Area

## LABORERS

Group 1: Laborer, general or construction; Tool Dispatcher or Checker; Manually-controlled Signal Operator; Fence Builder, Guard Rail Builder - highway; Chat Box Man; Dump-man and/or Spotter; Rip Rap Stone Man; Form Stripper; Landscape Gardener and Nurseryman; Packing Rod Steel and Pans; Window Cleaners; Cesspool Diggers and Installers; Concrete Dump Man - belt; Pipe and/or Hoseman; Astro-truf Layers; Clean-up, Bull Gang and Trackman - railroad; Chipper (clearing and grubbing)

Group 2: Cement Finisher Tender; Concrete Curer (Impervious Membrane); Cutting Torch Operator; Fine Grader (highway, engineering and sewer work only); Kettleman - Tarsan; Power-type Concrete Buggy

Group 3: Chuck Tender (except tunnel); Sandblaster (Pot Tender); Powderman Tender; Spikers and Wrenchers; Rip Rap Stone Pavers; Creosote Hiesan; Guinea Chaser; Bander

Group 4: Operator and Tenders of pneumatic and electric tools; Concrete Vibrating Machines; Chain Saw Machines (on clearing and grubbing); Floor Sanders - concrete; Hydraulic Jacks and similar mechanical tools not separately herein classified; Cement Dumpers (skip-type Mixer or handling bulk cement); Pipe Caulker and/or Backup Man (pipeline); Rigger/Signalman (pipeline); Pipe Wrapper; Cribber and Shorer (except tunnel); Pneumatic Gopher

Group 5: Grade Setter (pipeline); Driller; Jackhammer and/or Pavement Breakers; Pipe Layer (including but not limited to non-metallic, transite and plastic pipe, water pipe, sewer pipe, drain pipe, underground tile and conduit); Rock Slinger; Asphalt Rakers and Ironers; Air and water Wash-out Nozzleman; Scaler (using Bos'n's Chair or Safety Belt); Tamper (mechanical, all types); Hand-guided Trencher and similar operated equipment; Precast Manhole Erector

Group 6: Driller (Core, Diamond, Wagon or Air Track); Sandblaster (Nozzleman); Concrete Saw (hand-guided); Concrete Cutting Torch; Drill Doctor and/or Air Tool Repairman; Gunman and Mixerman (Gumite)

Group 7: Gunite Nozzleman or Rodman; Scaler (Drillers); Form Setter and/or Builder; Welders and/or Pipe Layers, installing process piping; Drillers, Joy Mustangs, PR 143, 220 Gardener-Denver, Hydromatic; Powder Man



**LABORERS (cont'd)**  
(Tunnel and Shaft Workers)

Group 1: Bull Gang, Mockers, Trackman, Dumpmen; Concrete Crew (includes Rodders and Spreaders); Grout Crew; Swamper (Brakeman and Switchmen on tunnel work); Change House Man

Group 2: Nipper; Choctender, Cabletender; Vibratorman, Jackhammer, Pneumatic Tools (except Driller)

Group 3: Grout Gunman

Group 4: Timberman, Retimberman - wood or steel blaster, Driller, Powderman; Cherry Pickerman; Powderman - Primer House; Steel Form Raiser and Setter; Kemper and other Pneumatic concrete placer Operator; Miner - Finisher; Miners - Tunnel (hand or machine)

Group 5: Diamond Drill

Group 5A: Shaft and Raise Miner Welder

| Basic Hourly Rates | Basic Hourly Rates | M & W   | Fringe Benefits Payments |          |  | Education and/or Apprent. Tr. |
|--------------------|--------------------|---------|--------------------------|----------|--|-------------------------------|
|                    |                    |         | Pension                  | Vacation |  |                               |
| N AREA             | C and S AREAS      |         |                          |          |  |                               |
| Group 1            | 12.875             | \$10.75 | \$1.40                   | \$1.30   |  | .08                           |
| Group 2            | 13.335             | 11.21   | 1.40                     | 1.30     |  | .08                           |
| Group 3            | 13.885             | 11.76   | 1.40                     | 1.30     |  | .08                           |
| Group 4            | 14.545             | 12.42   | 1.40                     | 1.30     |  | .08                           |
| Group 5            | 15.185             | 13.06   | 1.40                     | 1.30     |  | .08                           |
| Group 5A           | 15.565             | 13.44   | 1.40                     | 1.30     |  | .08                           |
| Group 6            | 15.975             | 13.85   | 1.40                     | 1.30     |  | .08                           |
| Group 7            | 16.715             | 14.59   | 1.40                     | 1.30     |  | .08                           |

**AREA DESCRIPTIONS**

**NORTHERN AREA:**

Area north of a straight line drawn between a point 35 miles due north of the City Hall in Flagstaff and a point 35 miles due north of the City Hall in Kingman, extending to the Arizona/Nevada State Line on the west; and connecting to a point 35 miles due north of the City Hall in Holbrook, thence due east to the intersection of the Arizona/New Mexico State Line

**CENTRAL and SOUTHERN AREAS:**

All Areas not included in the Northern Area



POWER EQUIPMENT OPERATORS  
(Except Piledriving and Steel Erection)

Group 1: Air Compressor Operator; Field Equipment Servicemen Tender; Heavy-duty Repair Tender; Heavy-duty Welder Tender; Oilier; Pump Operator

Group 2: Conveyor Operator; Generator Operator - portable; Power Grizzly Operator; Self-propelled Chip Spreading Machine - Conveyor Operator; Watch Fireman; Welding Machine Operator - gasoline and diesel power

Group 3: Concrete Mixer Operator - skip-type; Driver; Moto-paver, Slurry Seal Machine and similar type equipment; Dinky Operator (under 20 tons wt.); Motor Crane Driver; Power Sweeper Operator, self-propelled; Ross Carrier or Forklift Operator; Skip Loader Operator, all types with rated capacity 1½ cu. yds. or less; Wheel-type Tractor Operator (Ford, Ferguson, or similar type) with attachments such as Fresno, Push Blade, Post Hole Auger, Mower, etc. excluding compacting equipment

Group 4: A-Frame Boom Truck or Winch Truck Operator; Asphalt Plant Fireman; Elevator Hoist Operator (including Turkey Hoist or similar type); Grade Checker (excluding Civil Engineer); Multiple power Concrete Saw Operator; Pavement Breaker; Mechanical Compactor Operator, power propelled; Roller Operator, all types, except as otherwise classified; Screed Operator; Self-propelled Chip Spreading Machine Operator (including Slurry Seal Machine Operator; Stationary Pipe Wrapping and Cleaning Machine Operator; Tugger Operator

POWER EQUIPMENT OPERATORS (Cont'd)  
(Except Piledriving and Steel Erection)

Group 5: Aggregate Plant Operator (including Crushing, Screening and Sand Plants, etc.); Asphalt Laydown Machine Operator; Asphalt Plant Mixer Operator; Beltcrete Operator; Boring Machine Operator; Concrete Mechanical Tamping, Spreading or Finishing Machine (including Clary, Johnson or similar types); Concrete Pump Operators; Concrete Batch Plant Operator, all types and sizes; Conductor, Brakeman or Handler; Drilling Machine; Elevating Grader Operator, all types and sizes (except as otherwise classified); Highline Cableway Signaller; Field Equipment Serviceman; Kolman Belt Loader Operator or similar with belt width 48" or over; Locomotive Engineer (including Dinky, 20 tons wt. and over); Moto-paver and similar type equipment Operator; Operating Engineer Rigger; Pneumatic-tired Scraper Operator (Turnapull, Euclid, Cat, D-W, Hancock and similar equipment) up to and including 12 cu. yds.; Power Jumbo Form Setter Operator; Pressure Grout Machine Operator (as used in heavy engineering construction); Road Oil Mixing Machine Operator; Roller Operator, on all types asphalt pavement; Self-propelled Compactor, with blade; Skip Loader Operator, all types rated capacity, over 1½ but less than 4 cu. yds.; Slip Form Operator (power driven lifting device for concrete forms); Soil Cement Road Mixing Machine Operator, single pass type; Stationary Central Generating Plant Operator, rated 300 K. W. or more; Surface Heater and Planer Operator; Traveling Pipewrapping Machine Operator

Group 5A: Heavy-duty Mechanic and/or Welder; Pneumatic-tired Scraper, all sizes and types over 12 cu. yds. up to and including 45 cu. yds. MRC (Turnapull, Euclid, Cat, D-W, Hancock and similar equipment); Tractor Operator (Pusher, Bulldozer, Scraper) up to 400 net horsepower rating; Trenching Machine Operator



DECISION NO. A281-5142

Page 25

Page 24

POWER EQUIPMENT OPERATORS (Cont'd)  
(Except Pile-driving and Steel Erection)

Group 6: Auto Grade Machine (CMI and similar equipment); Boring Machine Operator (including Mole, Badger and similar type); Concrete Mixer Operator, paving type, and Mobile Mixer; Concrete Pump Operator with boom attachment (truck mounted); Crane Operator, Crawler and pneumatic type, under 100 ton capacity MRC; Crawler type Tractor Operator, with boom attachment or slope bar; Derrick Operator; Forklift Operator for hoisting personnel; Grade-all Operator; Helicopter Hoist; Highline Cableway Operator (less than 20 tons rated capacity); Mass Excavator Operator (150 Bucyrus Erie and similar types); Mechanical Hoist Operator (two or more drums); Motor Grade Operator, any type power blade; Motor Grade Operator with elevating grader attachment; Mucking Machine Operator; Overhead Crane Operator; Pile-driver Engineer (portable, stationary or skid rig); Pneumatic-tired Scraper Operator, all sizes and types (Turnapull, Euclid, Cat, D-W, Hancock and similar equipment over 45 cu. yds., MRC); Power driven Ditch Lining or Ditch Trimming Machine Operator; Skip Loader Operator, all types with rated capacity 4 cu. yds., but less than 8 cu. yds.; Slip Form Paving Machine Operator (including Gunnert, Zimmermann and similar types); Specialized Power Digger Operator, attached to wheel-type tractor; Tower Crane (or similar type) Operator; Tractor Operator (Pusher, Bulldozer, Scraper) (400 net horsepower and over); Tugger Operator (two or more); Universal Equipment Operator, Shovel, Backhoe, Dragline, Clamshell, etc., up to 8 cu. yds.

Group 7: Crane Operator, Pneumatic or Crawler (100 ton hoisting capacity and over MRC rating); Helicopter Pilot, FAA qualified, when used in construction work; Highline Cableway Operator, over 20 ton rated capacity and using Traveling Head and Tail Tower; Remote-control Earth Moving Equipment Operator; Skip Loader Operator, all types with rated capacity of 8 cu. yds. or more; Universal Equipment - Shovel, Backhoe, Dragline, Clamshell, etc., 8 cu. yds. and over

TRUCK DRIVERS

|          | Basic Hourly Rates | C and S AREAS | Basic Hourly Rates | Fringe Benefits Payments |          |          | Education and/or Appl. Tr. |
|----------|--------------------|---------------|--------------------|--------------------------|----------|----------|----------------------------|
|          |                    |               |                    | H & W                    | Pensions | Vacation |                            |
| Group 1  | \$12.445           | \$10.32       | \$1.12             | \$1.30                   |          |          | .10                        |
| Group 2  | 12.605             | 10.48         | 1.12               | 1.30                     |          |          | .10                        |
| Group 3  | 12.875             | 10.75         | 1.12               | 1.30                     |          |          | .10                        |
| Group 4  | 13.305             | 11.18         | 1.12               | 1.30                     |          |          | .10                        |
| Group 5  | 13.495             | 11.37         | 1.12               | 1.30                     |          |          | .10                        |
| Group 5A | 13.735             | 11.61         | 1.12               | 1.30                     |          |          | .10                        |
| Group 6  | 13.895             | 11.77         | 1.12               | 1.30                     |          |          | .10                        |
| Group 7  | 14.395             | 12.27         | 1.12               | 1.30                     |          |          | .10                        |
| Group 8  | 15.03              | 12.905        | 1.12               | 1.30                     |          |          | .10                        |
| Group 8A | 15.825             | 13.70         | 1.12               | 1.30                     |          |          | .10                        |
| Group 8B | 13.135             | 11.01         | 1.12               | 1.30                     |          |          | .10                        |
| Group 8C | 15.445             | 13.32         | 1.12               | 1.30                     |          |          | .10                        |

NORTHERN AREA:

Area north of a straight line drawn between a point 35 miles due north of the City Hall in Flagstaff and a point 35 miles due north of the City Hall in Kingman, extending to the Arizona/New Mexico State Line on the west, and connecting to a point 35 miles due north of the City Hall in Holbrook, thence due east to the intersection of the Arizona/New Mexico State Line

CENTRAL and SOUTHERN AREAS:

All Areas not included in the Northern Area



## TRUCK DRIVERS

- Group 1: Teamsters; Pick-ups; Station Wagon; Man Haul Driver
- Group 2: Dump or Flatrack (2 or 3 axle); Water Truck (under 2500 gallons); Buggymobile (1 cu. yd. or less); Bus Driver; Self-propelled Street Sweeper; Shop Greaser
- Group 3: Dump or Flatrack (4 axle); Dumptor or Dumpster (less than 7 cu. yds.); Water Truck (2500 gallons but less than 4000 gallons); Tireman
- Group 4: Dumptor or Dumpster (7 cu. yds. but less than 16 cu. yds.); Dump or Flatrack (5 axle); Water Truck (4000 gallons and over); Slurry type equipment Driver or Leverman; Vacuum Pump Truck Drivers; Flaherty Spreader or similar type equipment or Leverman; Transit Mix (8 cu. yds. or less mixer capacity); Warehouseman and/or Warehouse Clerk; Ambulance Driver
- Group 5: Dump or Flatrack (6 axle); Transit Mix (over 8 cu. yds. but less than 10.5 cu. yds.); Rock Truck (i.e. Dart, Euclid and other similar type end Dumps, single unit) less than 16 cu. yds.
- Group 5A: Oil Tanker or Spreader and/or Bootman, Retortman or Leverman
- Group 6: Transit Mix (over 10.5 cu. yds. but less than 14 cu. yds. mixer capacity); Ross Carrier, Fork Lift or Lift Truck; Hydro Lift, Swedish Crane, Iowa 300 and similar types; Concrete Pump (when integral part of Transit Mix Truck); Dump or Flatrack (7 axle); Transport Driver (unless axle rating results in higher classification)
- Group 7: Dump or Flatrack (8 axle)
- Group 8: Off-highway equipment Driver including but not limited to: 2 or 4 wheel power unit, i.e. Cat, DW Series, Euclid, International and similar type equipment, transporting material when top loaded or by external means including pulling Water Tanks, Fuel Tanks or other applications under Teamster Classifications; Rock Trucks (Dart, Euclid, or other similar end dump types) 16 cu. yds. and over; Eject-allis; Dumptor or Dumpster (16 cu. yds. and over); Dump or Flatrack (9 axle)
- Group 8A: Heavy-duty Mechanic/Welder; Body and Fender Man
- Group 8B: Heavy-duty Mechanic/Welder Tender
- Group 8C: Field Equipment Serviceman or Fuel Truck Drivers
- Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a) (1)(ii)).

## SUPERSEDEAS DECISION

STATE: Hawaii COUNTRIES: Statewide  
 DECISION NUMBER: H181-5141 DATE: Date of Publication  
 Superseades Decision No. H181-5106 dated March 6, 1981 in 46 FR 15650  
 DESCRIPTION OF WORK: Building Projects (including single family homes and apartments up to and including 4 stories), Heavy and Highway Projects and Dredging

|                                                                                          | Basic Hourly Rate | Fringe Benefits Payments |          |          | Education and/or App. Tr. |
|------------------------------------------------------------------------------------------|-------------------|--------------------------|----------|----------|---------------------------|
|                                                                                          |                   | H & W                    | Pensions | Vacation |                           |
| ASBESTOS WORKERS                                                                         | \$12.19           | .70                      | \$ 2.50  |          | .06                       |
| BOILERMAKERS                                                                             | 13.45             | .93                      | 1.25     |          | .03                       |
| BRICKLAYERS; Stonemasons                                                                 | 12.38             | 1.30                     | 2.15     | .70      | .20                       |
| CARPENTERS:                                                                              |                   |                          |          |          |                           |
| Carpenters; Hardwood Floor-layers; Patent Scaffold Erectors; Pneumatic Mailer; Shinglers | 11.00             | 1.44                     | 1.95     | 1.00     | .06                       |
| Power Saw Operator (2 HP and over)                                                       | 11.15             | 1.44                     | 1.95     | 1.00     | .06                       |
| Millwrights                                                                              | 11.25             | 1.44                     | 1.95     | 1.00     | .06                       |
| CEMENT MASONS:                                                                           |                   |                          |          |          |                           |
| Cement Masons                                                                            | 12.33             | 1.30                     | 2.00     | .70      | .20                       |
| Troweling Machine Operators                                                              | 12.48             | 1.30                     | 2.00     | .70      | .20                       |
| DRAPERY INSTALLERS                                                                       | 6.45              | .50                      | .40      | b        |                           |
| DRYWALL APPLICATOR                                                                       | 11.10             | 1.44                     | 1.95     | 1.00     | .07                       |
| ELECTRICIANS:                                                                            |                   |                          |          |          |                           |
| Electricians; Linemen                                                                    | 12.86             | 1.17                     | 154+1.84 | 11.64    | .55                       |
| Technicians                                                                              | 13.25             | 1.17                     | 154+1.84 | 11.64    | .55                       |
| Cable Splicers                                                                           | 14.15             | 1.17                     | 154+1.84 | 11.64    | .55                       |
| ELEVATOR CONSTRUCTORS                                                                    | 15.63             | 1.195                    | .95      | a        | .035                      |
| ELEVATOR CONSTRUCTORS' HELPERS                                                           | 10.94             | 1.195                    | .95      | a        | .035                      |
| ELEVATOR CONSTRUCTORS' HELPERS (PROB.)                                                   | 7.815             |                          |          |          |                           |
| FENCE ERECTORS:                                                                          |                   |                          |          |          |                           |
| Chain Link                                                                               | 5.39              | .23                      | .29      | .10      | .03                       |
| Galviers                                                                                 | 11.10             | 1.20                     | 1.37     | .97      | .15                       |
| IRONWORKERS:                                                                             |                   |                          |          |          |                           |
| Bridge; Ornamental; Reinforcing; Structural                                              | 12.25             | 1.15                     | 1.30     | 1.55     | .12                       |
| LINE CONSTRUCTION WORKERS:                                                               |                   |                          |          |          |                           |
| Electricians; Linemen                                                                    | 12.86             | 1.17                     | 154+1.84 | 11.64    | .55                       |
| Technicians                                                                              | 13.25             | 1.17                     | 154+1.84 | 11.64    | .55                       |
| Heavy Equipment Operator                                                                 | 11.57             | 1.17                     | 154+1.84 | 11.64    | .55                       |
| Groundmen                                                                                | 9.65              | 1.17                     | 154+1.84 | 11.64    | .55                       |
| Cable Splicers                                                                           | 14.15             | 1.17                     | 154+1.84 | 11.64    | .55                       |
| MAKABLE SETTERS                                                                          | 12.38             | 1.30                     | 2.15     | .70      | .20                       |
| PAINTERS:                                                                                |                   |                          |          |          |                           |
| Brush                                                                                    | 12.05             | .84                      | 3.00     | 1.00     | .10                       |
| Tapers                                                                                   | 12.30             | .84                      | 3.00     | 1.00     | .10                       |
| Spray; Sandblaster                                                                       | 12.55             | .84                      | 3.00     | 1.00     | .10                       |
| PLASTERERS                                                                               | 12.34             | 1.45                     | 2.30     | .70      | .21                       |



|                                     | Basic Hourly Rates | Fringe Benefits Payments |          |          |  | Education and/or Appr. Tr. |
|-------------------------------------|--------------------|--------------------------|----------|----------|--|----------------------------|
|                                     |                    | H & W                    | Pensions | Vacation |  |                            |
| PLUMBERS; Steamfitters              | \$13.00            | \$1.05                   | \$2.05   | \$1.95   |  | .15                        |
| ROOFERS                             | 12.45              | 1.15                     | 1.70     | .50      |  | .15                        |
| SHEET METAL WORKERS                 | 12.65              | 1.78                     | 2.96     |          |  | .44                        |
| SOFT FLOOR LAYERS                   | 12.00              | .75                      | 1.75     | .55      |  | .29                        |
| SPRINKLER FITTERS                   | 15.80              | .95                      | 1.40     |          |  | .08                        |
| TERRAZZO WORKERS and TILE SETTERS:  |                    |                          |          |          |  |                            |
| Terrazzo Base Grinder               | 10.31              | 1.30                     | 2.00     |          |  | .15                        |
| Terrazzo Floor Grinder and Finisher | 9.22               | 1.30                     | 2.00     |          |  | .15                        |
| Terrazzo Workers and Tile Setters   | 11.52              | 1.30                     | 2.00     |          |  | .15                        |

RIGGERS; WELDERS: Receive rate prescribed for craft performing operation to which rigging or welding is incidental

#### FOOTNOTES:

- Employer contributes 8% of basic hourly rate for 5 years' service and 6% of basic hourly rate for 6 months' to 5 years' service as Vacation Pay Credit. Six Paid Holidays: A thru F. Seven Paid Holidays: A thru F plus Kamehaha Day. In order to be eligible for a Paid Holiday, employees must work the last working day before the Holiday and the first working day following the Holiday. If the employee did not work either of these two days due to illness or layoff, he shall be entitled to Holiday Pay. In case of illness, the Company may require proof of illness.

#### PAID HOLIDAYS:

A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

|                            | Basic Hourly Rates | Fringe Benefits Payments |          |          |  | Education and/or Appr. Tr. |
|----------------------------|--------------------|--------------------------|----------|----------|--|----------------------------|
|                            |                    | H & W                    | Pensions | Vacation |  |                            |
| DREDGING                   |                    |                          |          |          |  |                            |
| Hydraulic Suction Dredges; |                    |                          |          |          |  |                            |
| Clamshell Dredges; Boat    |                    |                          |          |          |  |                            |
| Operators; Derricks:       |                    |                          |          |          |  |                            |
| Group 1                    | \$13.75            | \$1.35                   | \$2.80   | .95      |  | .05                        |
| Group 2                    | 13.24              | 1.35                     | 2.80     | .95      |  | .05                        |
| Group 3                    | 12.69              | 1.35                     | 2.80     | .95      |  | .05                        |
| Group 4                    | 11.03              | 1.35                     | 2.80     | .95      |  | .05                        |
| Group 5                    | 11.03              | 1.35                     | 2.80     | .95      |  | .05                        |
| Group 6                    | 11.03              | 1.35                     | 2.80     | .95      |  | .05                        |
| Group 7                    | 13.50              | 1.35                     | 2.80     | .95      |  | .05                        |
| Group 8                    | 12.58              | 1.35                     | 2.80     | .95      |  | .05                        |
| Group 9                    | 12.20              | 1.35                     | 2.80     | .95      |  | .05                        |
| Group 10                   | 11.03              | 1.35                     | 2.80     | .95      |  | .05                        |

Group 1: Clamshell or Dipper Operator; Operators (Derricks, Piledrivers and Cranes)

Group 2: Mechanic or Welder; Assistant Engineer; Assistant Engineer (steam or electric)

Group 3: Deckmate; Barge Mate (Seagoing)

Group 4: Fireman

Group 5: Oiler; Deckhand (can operate Anchor Scow under direction of Deck Mate)

Group 6: Bargeman; Leveeman

Group 7: Leveeman; Master Boat Operator

Group 8: Winchman (Stern Winch on Dredge)

Group 9: Boat Operator

Group 10: Boat Deckhand



## LABORERS:

Group 1  
Group 1-A  
Group 1-B  
Group 1-C  
Group 1-D  
Group 1-E  
Group 1-F  
Group 1-G  
Group 2  
Group 3

| Basic<br>Monthly<br>Rates | Fringe Benefits Payments |          |          |                                 |
|---------------------------|--------------------------|----------|----------|---------------------------------|
|                           | H & W                    | Pensions | Vacation | Education<br>and/or<br>App. Tr. |
| \$8.61                    | \$1.09                   | \$1.56   | .60      | .08                             |
| 8.66                      | 1.09                     | 1.56     | .60      | .08                             |
| 9.01                      | 1.09                     | 1.56     | .60      | .08                             |
| 9.21                      | 1.09                     | 1.56     | .60      | .08                             |
| 9.06                      | 1.09                     | 1.56     | .60      | .08                             |
| 9.31                      | 1.09                     | 1.56     | .60      | .08                             |
| 9.36                      | 1.09                     | 1.56     | .60      | .08                             |
| 9.56                      | 1.09                     | 1.56     | .60      | .08                             |
| 8.86                      | 1.09                     | 1.56     | .60      | .08                             |
| 9.06                      | 1.09                     | 1.56     | .60      | .08                             |

Group 1: All clean-up work of debris, grounds, buildings;  
Bridge Laborers; Construction Laborers; Dumpmen; General  
Laborers; Limbers, Brush Loaders and Pilers

Group 1-A: Plaster Laborers

Group 1-B: Plaster Rod Carrier

Group 1-C: Plaster Mortar Mixer

Group 1-D: Mason Tender

Group 1-E: High Scaler

Group 1-F: Gunnite Operator

Group 1-G: Powderman

## LABORERS (Con'td)

Group 2: Asphalt Shovelers; Cement Dumpers; Choke-setter and  
Rigger (clearing work); Concrete Chipping; Driller's Tender;  
Chuck Tender; Outside Slinger; Guinea Chaser (Stakenan); High  
Pressure Mozlesan-hydraulic Monitor (over 100# pressure) ex-  
cluding levee work; Loading and unloading, carrying and handling  
of all rods and materials for use in reinforcing concrete con-  
struction; Sloper; All pneumatic, gas and electric tools not  
listed in Group 1

Group 3: Asphalt Ironers, Rakers and Hand Rollers; Barko and  
similar type Tapers; Suggymobile; Chainsaw, Faller, Logloader  
and Bucker; Concrete and Magnesite Mixer under 1/2 yard; Con-  
crete Grinder; Concrete Pan Work; Concrete Saw (walking or hand  
type); Cribbers; Cut Granite Curb Setters; Form Raisers; Header  
Board; Mortar Mixers (block-brick-masonry); Jackhammer Operator  
Jackson and similar type Compactors; Lagging, Sheeting, Whaling,  
Bracing, Trench-jacking, Hand-guided Lagging Hammer; Magnesite  
and Mastic Workers (wet or dry); Mechanical Drillers not covered  
elsewhere; Pavement Breakers; Pipelayers, Caulkers, Bander; Pipe-  
wrappers, Kettlemen, Potmen and men applying asphalt, Lay-Kold,  
Cresote and similar type materials; Post Hole Diggers (hand  
held-gas, air and electric); Riprap, Stonepaver and Rockalinger,  
including placing of sacked concrete (wet or dry); Rotary Scari-  
fier; Roto-tiller; Sandblasters; Tank Cleaners; Tree Climbers;  
Vibra-screed (Bull Float in connection with Laborers' work);  
Vibrator; Burning, welding, signaling and rigging in connection  
with Laborers' work; Concrete Pump Machine; Joy Drill Model TM-  
2A, Gardner Denver DH-143 and similar type drills; Tract Drillers,  
Diamond, Core and Wagon Drillers; Davis Trencher T-66 or similar  
types; Concrete Laborers (wet or dry), including Bucket Tender  
for concrete



LANDSCAPE and IRRIGATION  
LABORERS:

|         | Basic Hourly Rates | Fringe Benefits Payments |          |          | Education and/or Appr. Tr. |
|---------|--------------------|--------------------------|----------|----------|----------------------------|
|         |                    | M & W                    | Pensions | Vacation |                            |
| Group 1 | \$7.75             | \$1.09                   | .80      | .60      |                            |
| Group 2 | 7.25               | 1.09                     | .80      | .60      |                            |
| Group 3 | 5.50               | 1.09                     | .80      | .60      |                            |

Group 1: Install all Valves, Vacuum Breakers, Cooper; Galvanized P.V.C., make tie-in to all main lines; Layout and installation of low voltage electrical lines; Install Heads, Risers, Valve Boxes; Install drinking fountains and all other portable water systems and tie-ins to main lines; Installing hydraulic or electrical Controller, make pressure test; All soldering with torch or Soldering Iron; Shoot Grader Elevations; Check all plants and shrubs for proper size, caliber and condition; Rock and stone Setter; Concrete Chipping; Choke Setting, Signalling and Rigging for equipment Operators on Job site; Concrete Laborers (wet and dry) including Buckets Tender for concrete; Vibrator, Concrete Grinder, Saw Cutter (hand or walking type); Concrete Pump Machine Operator; Concrete Mixer under 1/2 yard; Handheld gas, air and electric tools (i.e., Jackhammer, Buster, Mud Gun, Jumping Jack, Jackson and similar Compactor, etc.); Chain Saw Tree Trimmers, Tree Climbers; Riding Trencher, Davis Trencher T-66 or similar type Fork Lift; Operation of Flatbed truck up to and including 2 1/2 tons; Hydro-mulching Machine Operator; Sit-down Mower; Operation of Hop-toe, Backhoe, John Deere or Case light Dozer and similar types; Bantam or Grove 18 ton and under Cranes and similar types; Light Loaders or Rollers; Trucks requiring type seven and P.O.C. licenses and similar type sit-down driven machines not covered in Group 2

Group 2: Planting of trees, shrubs, ground covers, sprigging, hand-seeding, fertilizing, chemical spraying, raking, grubbing, guy-wiring, staking, propping, supporting trees, hand excavation (pick and shovel), hand rolling or tamping; Handheld gas, air or electric weed-eater; Cleaning and gluing pipe and fittings; Adjust Heads and Risers, staking and clamping Risers; Hand watering, watering by sprinkler system; Weeding, trimming and pruning

Group 3: Horticultural related work; Gardening and Yardman work; Maintenance of trees, shrubs, ground covers, and lawns; Fertilizing, chemical spraying, raking, guywiring, staking, propping, supporting trees; Cleaning and gluing pipe and fittings; Adjust Heads and Risers, staking and clamping Risers; Hand watering, watering by sprinkler system, weeding, trimming and pruning

POWER EQUIPMENT OPERATORS  
(Except Piledriving and Steel Erection):

|                                        | Basic Hourly Rates | Fringe Benefits Payments |          |          | Education and/or Appr. Tr. |
|----------------------------------------|--------------------|--------------------------|----------|----------|----------------------------|
|                                        |                    | M & W                    | Pensions | Vacation |                            |
| Group 1                                | \$10.75            | \$1.35                   | \$2.80   | .95      | .05                        |
| Group 2                                | 10.85              | 1.35                     | 2.80     | .95      | .05                        |
| Group 3                                | 11.03              | 1.35                     | 2.80     | .95      | .05                        |
| Group 4                                | 11.30              | 1.35                     | 2.80     | .95      | .05                        |
| Group 5                                | 11.61              | 1.35                     | 2.80     | .95      | .05                        |
| Group 6                                | 12.26              | 1.35                     | 2.80     | .95      | .05                        |
| Group 7                                | 12.58              | 1.35                     | 2.80     | .95      | .05                        |
| Group 8                                | 12.69              | 1.35                     | 2.80     | .95      | .05                        |
| Group 9                                | 12.80              | 1.35                     | 2.80     | .95      | .05                        |
| Group 9-A                              | 13.03              | 1.35                     | 2.80     | .95      | .05                        |
| Group 10                               | 12.09              | 1.35                     | 2.80     | .95      | .05                        |
| Group 10-A                             | 13.24              | 1.35                     | 2.80     | .95      | .05                        |
| Group 11                               | 13.39              | 1.35                     | 2.80     | .95      | .05                        |
| Group 12                               | 13.75              | 1.35                     | 2.80     | .95      | .05                        |
| <b>HELICOPTER WORK:</b>                |                    |                          |          |          |                            |
| Pilot of helicopter                    | 14.92              | 1.35                     | 2.80     | .95      | .05                        |
| Copilot of helicopter                  | 14.75              | 1.35                     | 2.80     | .95      | .05                        |
| Airborne Hoist Operator for helicopter | 14.61              | 1.35                     | 2.80     | .95      | .05                        |
| DIVER (Aqua Lung)                      | 16.06              | 1.35                     | 2.80     | .95      | .05                        |
| <b>ASPHALT PAVING GROUP:</b>           |                    |                          |          |          |                            |
| Asphalt Maker                          | 11.30              | 1.35                     | 2.75     | a        |                            |
| Asphalt Spreader Operator              | 12.58              | 1.35                     | 2.75     | a        |                            |
| Roller Operator:                       |                    |                          |          |          |                            |
| Over 5 tons                            | 12.26              | 1.35                     | 2.75     | a        |                            |
| 5 tons and under                       | 11.03              | 1.35                     | 2.75     | a        |                            |
| Screed Man                             | 11.61              | 1.35                     | 2.75     | a        |                            |
| Hand Roller                            | 10.80              | 1.35                     | 2.75     | a        |                            |

## FOOTNOTE:

a. Employee who has completed two to five years' service shall receive a vacation of one week with pay; each additional year an additional one day vacation with pay; ten or more years, a vacation for two weeks each year; for each year of completed service thereafter to and including fifteen years' service, an addition of one day vacation with pay; fifteen or more years of service, a vacation of three weeks each year with pay.



POWER EQUIPMENT OPERATORS  
(Except Piledriving and Steel Erection)

Group 1: Partsman (heavy duty repair shop parts room when needed); Repairman Tender

Group 2: Compressor, electrically, diesel or gas powered; Hydraulic Monitor; Material Loader and/or Conveyor Operator (handling building material); Mixer Box Operator (concrete plant); Pump Operator; Spreader Boxman (with screeds); Tar Pot Fireman (power agitated)

Group 3: Oiler; Fireman; Switchman; Brakeman; Deckhand; Tar Pot Fireman; Box Operator (bunker); Locomotive (up to and including 30 tons); Roller (5 tons and under); Screedman (except asphalt concrete paving); Self-propelled, automatically applied concrete curing Machine (on streets, highways, airports and canals); Tugger Hoist, single drum; Rodman and Chainman

Group 4: Boom Truck or Dual Purpose "A" Frame Truck; Dinky Operator; Fork Lift or Lumber Stacker (construction job site); Material Hoist (1 drum); Straddle Truck; Ross Carrier and similar (job site)

Group 5: Agri-Cat (mini-cat); Concrete Mixer (up to 2 yards); Concrete Pumps or Pumpcrete Guns; Generators, gasoline or diesel driven (100 K.W.); Lubrication and Service Engineer (mobile and grease rack); Towermobile; Welding Machine (gasoline diesel)

Group 6: Combination Loader and Backhoe including Hopto (up to and including 1/2 yard); Concrete Batch Plants (wet or dry); Concrete Saws and/or Grinder (self-propelled unit on streets, highways, airports, and canals); Drilling Machinery not to apply to Waterliners, Wagon Drills or Jackhammers); Highline Cableway Signalman; Loader (up to and including 2 1/2 cu. yds.); Lull High Lift; Maginnis Internal Pull Slab Vibrator (on airports, highways, canals, and warehouses); Mechanical Finishers (concrete) (large Clary, Johnson Bidwell Bridge Deck or similar types); Mobile Crane Driver; Pavement Breakers; Portable Crushers; Power Jumbo Operator (setting slip forms, etc. in tunnels); Rollers (over 5 tons); Self-propelled Compactor (single engine); Slip Form Pumps (power driven hydraulic, electric, air, gas, etc. lifting device for concrete forms); Small Rubber-tired tractors; Trainers (up to and including 6 feet)

POWER EQUIPMENT OPERATORS (Cont'd)  
(Except Piledriving and Steel Erection)

Group 7: Crusher Plant; Dual Drum Mixer; Gradesetter (mechanical or otherwise); Hoist (2 drums); Loader (over 2 1/2 cu. yds. up to and including 5 cu. yds.); Mechanical Finishers of Spreader Machine, Asphalt (Barber Greene and similar); Mine or Shaft Hoist; Mixermobile (over 5 tons); Pavement Breaker, truck mounted, with compressor combination (operates 1 or 2); Pipe Cleaning Machine (tractor propelled and supported); Pipe Wrapping Machine (tractor propelled and supported); Pipe Bending Machine (pipe lines only); Self-propelled Elevating Grade Planer; Slusher Operator; Small Tractor (with boom D-6 or similar); Trencher (over 6 ft.); Water Tanker (pulled by Euclids, T-Pulls, DM-10, 20, 21 or similar); Instrument Man

Group 8: Boring Machine; Cast-in-place Pipe Laying Machine; Concrete Batch Plant (multiple units); Combination Loader and Hydraulic Backhoe (over 1/2 yd. up to and including 3/4 yd.); Conveyor (tunnel); Engineer, Locomotive (over 30 tons up to and including 100 tons); Finishing Machine Operator (airports and highways); Hydraulic Backhoe (over 1/2 yd. to and including 3/4 yard); Kolman Loader; Mechanic Trench Shield; Mucking Machine; No-joint Pipe Laying Machine; Portable Crushing and Screening Plants; Saurman type Dragline (under 5 yards); Self-propelled Boom type Lifting Device; Stationary Pipe Wrapping, Cleaning and Bending Machine; Surface Heater and Planer; Tunnel Bagger; Tri-batch Paver

Group 9: Boom type Backfilling Machine; Combination Mixer and Compressor (gunite); Do-more Loader and Adams Elevator; Lull Hi-lift (40' or over); Rubber-tired Earthmoving Equipment (up to 12 cu. yds.); Wheel Trencher (over 6")

Group 9-A: Dozers; Heavy Duty Repairman or Welder; Push Cats; Scrapers; Self-propelled Compactor with Dozer; Sheep Foot; Tractors; Tractors (with boom, larger than D-6 and similar)

Group 10: Chicago Boom; Hoist (3 drums); Koehring Scooper; Loader (over 5 yards up to and including 12 yards); Locomotive (over 100 tons) (single or multiple units); Power Blade Operator; Rubber-tired Earthmoving Equipment (up to and including 35 cu. yds., Euclid, T-Pulls, DM-10, 20, 21 and similar); Saurman type Dragline (5 yards or over); Soil Stabilizer (P & H equal); Sub-grader (Gurries or other automatic type); Track-laying type Earthmoving Machine (single engine with Tandem Scraper); Tractor, Compressor, Drill Combination; Tractor (Tandem Scraper); Tractors (D-9 or equivalent); Chief of Party



**POWER EQUIPMENT OPERATORS (Cont'd)**  
(Except Pile-driving and Steel Erection)

Group 10-A: Cranes (not over 25 tons); Power Shovels, Clamshells, Draglines, Backhoes, Grapplealls (up to and including 1 cu. yd.)

Group 11: Automatic Slip Form Paver (concrete or asphalt); Cranes (over 25 tons); DM-10, 20, etc. (Tandem); Earthmoving Machine (multiple propulsion power units and two or more scrapers) (up to and including 35 cu. yds. struck MRC); High-line Cableway; Lift Slab Machine; Loader (over 12 yds.); Power Shovels, Clamshells, Draglines, Backhoes, Grapplealls (over 1 yd. and up to 7 yds.); Power Blade Operator (16 or over); Prestress Wire Wrapping Machine; Self-propelled Compactor (with multiple propulsion power units); Single Engine Rubber Tired Earth Moving Machine (with tandem scraper); Tandem Cats; Tower Cranes, mobile; Trencher (pulling attached shield); Universal, Liebherr, Linden and similar types of tower cranes; Wheel Excavator (up to and including 750 cu. yds. per hour)

Group 12: Band Wagon (in conjunction with wheel excavator); Derricks; Drill Rigs; Multi-propulsion Earth Moving Machines (2 or more scrapers) (over 35 cu. yds. "struck" MRC); Power Shovels and Draglines (7 cu. yds. M.R.C. and over); Rubber-tired Earthmoving Equipment (over 35 cu. yds., Euclids, T-Pulls, DM-10, 20, 21 and similar); Wheel Excavator (over 750 cu. yds.)

**TRUCK DRIVERS:**

|         | Basic Hourly Rates | Fringe Benefits Payments |          |          | Education and/or Appt. T. |
|---------|--------------------|--------------------------|----------|----------|---------------------------|
|         |                    | M & W                    | Pensions | Vacation |                           |
| Group 1 | \$11.03            | \$1.35                   | \$2.80   | .95      | .05                       |
| Group 2 | 11.30              | 1.35                     | 2.80     | .95      | .05                       |
| Group 3 | 11.61              | 1.35                     | 2.80     | .95      | .05                       |
| Group 4 | 12.36              | 1.35                     | 2.80     | .95      | .05                       |
| Group 5 | 12.58              | 1.35                     | 2.80     | .95      | .05                       |
| Group 6 | 12.69              | 1.35                     | 2.80     | .95      | .05                       |

Group 1: Flatbed

Group 2: Dump, 8 yards and under; Water Truck (up to and including 2,000 gallons)

Group 3: Water Truck (over 2,000 gallons)

Group 4: Semi-trailer or Semi-dump

Group 5: Slip-in or Pup

Group 6: End Dumps, unlicensed (Euclid, Mack, Caterpillar or similar); Tractor Trailer (hauling equipment); Trucks (hooked up to trailer hauling equipment)

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a) (1) (ii))



## SUPERSEDES DECISION

STATE: ILLINOIS  
 COUNTY: CASS, MORGAN, & SCOTT  
 DECISION NUMBER: IL81-1031  
 DATE: Date of Publication  
 Supersedes Decision No. IL79-1035, dated May 11, 1979, in 44 FR 27862  
 DESCRIPTION OF WORK: Building Construction Projects (excluding single family homes and apartments up to and including 4 stories)

## DECISION NO. IL81-1031

|                     | Basic Hourly Rates | Fringe Benefits Payments |          |          |                            |
|---------------------|--------------------|--------------------------|----------|----------|----------------------------|
|                     |                    | H & W                    | Pensions | Vacation | Education and/or Appr. Tr. |
| ROOFERS             | \$14.93            | 1.00                     |          |          |                            |
| SHEET METAL WORKERS | 15.84              | .75-c                    | 1.28     |          | .04                        |
| SPRINKLER FITTERS   | 15.31              | .95                      | 1.40     |          |                            |

PAID HOLIDAYS: (WHERE APPLICABLE)  
 A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Day after Thanksgiving; & G-Christmas Day

## FOOTNOTES:

- a. 7 Paid Holidays: A through G  
 b. Employer contributes 8% of regular hourly rate to Vacation Pay Credit for employee who has worked in the business more than 5 years. Employer contributes 6% of regular hourly rate to Vacation Pay Credit for employee who has worked in the business less than 5 years.  
 c. 3% of gross earnings to SASHI

|                                                                                                                               | Basic Hourly Rates | Fringe Benefits Payments |          |          |                            |
|-------------------------------------------------------------------------------------------------------------------------------|--------------------|--------------------------|----------|----------|----------------------------|
|                                                                                                                               |                    | H & W                    | Pensions | Vacation | Education and/or Appr. Tr. |
| ASBESTOS WORKERS                                                                                                              | \$15.49            | 1.00                     | 1.26     |          | .03                        |
| BOILERMAKERS                                                                                                                  | 15.20              | 1.275                    | 1.50     |          |                            |
| BRICKLAYERS; Caulkers; Cement Block Layers; Cleaners; Marble Setters; Pointers; Stonemasons; Terrazzo Workers; & Tile Setters | 13.73              | .85                      | .56      |          | .05                        |
| CARPENTERS:                                                                                                                   | 13.35              | .75                      | .25      |          | .08                        |
| Carpenters; Lathers; & Soft Floor Layers                                                                                      | 13.85              | .75                      | .25      |          | .08                        |
| Millwrights; Piledrivermen                                                                                                    | 14.58              |                          | 1.20     |          | .05                        |
| CEMENT MASONRY:                                                                                                               | 15.92              | .55                      | 3%+.70   |          | .05                        |
| Cass Co.                                                                                                                      | 15.42              | 1.345                    | .95      | .65      | .035                       |
| Morgan & Scott Cos.                                                                                                           | 707.18             | 1.345                    | .95      | .65      | .035                       |
| ELECTRICIANS; Cable Splicers                                                                                                  | 13.49              | .45                      | .50      |          | .02                        |
| ELEVATOR CONSTRUCTORS:                                                                                                        | 15.10              | .55                      | 1.05     |          | .08                        |
| Morgan & Scott Cos.:                                                                                                          | 12.74              | .65                      | .45      |          | .05                        |
| Mechanics                                                                                                                     | 12.94              | .65                      | .45      |          | .05                        |
| Helpers (Prob.)                                                                                                               | 13.09              | .65                      | .45      |          | .05                        |
| GLAZIERS                                                                                                                      | 14.50              |                          |          |          |                            |
| IRONWORKERS                                                                                                                   | 14.65              |                          |          |          |                            |
| Unskilled                                                                                                                     | 15.05              |                          |          |          |                            |
| Semi-Skilled                                                                                                                  | 12.45              | .60                      | .50      |          | \$25.00p/yr                |
| Skilled                                                                                                                       | 12.95              | .60                      | .50      |          | 25.00p/yr                  |
| MARBLE SETTERS' FINISHERS:                                                                                                    | 13.45              | .60                      | .50      |          | 25.00p/yr                  |
| Terrazzo Workers' Finishers; & Tile Setters' Finishers:                                                                       | 13.20              | .60                      | .50      |          | 25.00p/yr                  |
| Marble & Tile Finishers                                                                                                       | 16.26              | 1.00                     | 1.00     |          | .01                        |
| Terrazzo Finishers; Terrazzo Floor Machine Ops.                                                                               | 13.73              | .85                      | .56      |          | .05                        |
| Terrazzo Base Machine Ops.                                                                                                    | 16.13              | .70                      | 1.43     |          | .07                        |
| PAINTERS:                                                                                                                     |                    |                          |          |          |                            |
| Brush                                                                                                                         | 12.45              | .60                      | .50      |          |                            |
| Sandblasting                                                                                                                  | 12.95              | .60                      | .50      |          |                            |
| Rollers; Tapers                                                                                                               | 13.45              | .60                      | .50      |          |                            |
| Spray                                                                                                                         | 13.20              | .60                      | .50      |          |                            |
| PLASTERERS:                                                                                                                   |                    |                          |          |          |                            |
| Cass Co.                                                                                                                      | 16.26              | 1.00                     | 1.00     |          | .01                        |
| Morgan & Scott Cos.                                                                                                           | 13.73              | .85                      | .56      |          | .05                        |
| PLUMBERS; Pipefitters; & Steamfitters                                                                                         |                    |                          |          |          |                            |



## DECISION NO. IL81-2051

## POWER EQUIPMENT OPERATORS:

CLASS I  
CLASS II  
CLASS III

|           | Basic Hourly Rates | Fringe Benefits Payments |          |           | Education and/or Appr. Tr. |
|-----------|--------------------|--------------------------|----------|-----------|----------------------------|
|           |                    | H & W                    | Pensions | Voc Rehab |                            |
| CLASS I   | \$14.75            | .85                      | .95      |           | .05                        |
| CLASS II  | 13.10              | .85                      | .95      |           | .05                        |
| CLASS III | 11.50              | .85                      | .95      |           | .05                        |

CLASS I: Asphalt Plant Engineers; Asphalt Spread Man; Aspc Concrete Spreaders; Asphalt Pavers; Asphalt Rollers on Bituminous Concrete; Athey Loaders; Backfillers; Crane Type Backhoes; Cableways; Cherry Pickers; Clim Shell; C.M.I. & Similar Type Autograde Formless Paver; Autograde Pacer & Finisher; Concrete Breakers; Concrete Plant Operators; Concrete Pumps; Cranes; Derrick Boats; Draglines; Earth Auger Boring Machines; Elevating Graders; Engineers on Dredge; Gravel Processing Machines; Head Equipment Graders; High Lift or Fork Lifts; Hoist w/ two Drums or Two or more Loaders; Locomotives; Mechanics; Motor Graders or Auto Patrols; Operators or Levelman on Dredges; Operators Power Boat; Operators Pug Mill (Asphalt Plants); Orange Peels; Overhead Cranes; Paving Mixers; Piledrivers; Pipe Wrapping & Painting Machines; Push Driers, or Push Cuts; Rock Crushers; Ross Carriers or Similar Machines; Scoops; Skimmers 2 cu. yds. cap. & under; Sump Foot Roller (Self-propelled); Shovels; Skimmer Scoops; Test Hole Drilling Machines; Tower Cranes; Tower Machines; Tower Mixers; Track Type & Loaders; Track Type Fork Lifts or High Lifts; Track Jacks & Tampers; Tractors; Sidbooms; Tranching Machines; Ditching Machine; Tunnel Loggers; Wheel Type End Loaders; Winch Car; Scoops (all or Turnspool)

CLASS II: Asphalt Boosters & Heaters; Asphalt Distributors; Asphalt Plant Fireman; Building Elevator; Bull Floats or Flexplows; Concrete Finishing Machines; Concrete Saws, Self-propelled; Concrete Spreader Machines; Gravel or Stone Spreaders; Power Operated; Hoist Automatic; Hoist w/ Drum & 1 Load Line; Oilier on 2 Paving Mixers when used in Tandem Boom or Winch Truck; Post Hole Diggers; Mechanical; Road or Street Sweeper-Self-propelled; Scissors Hoists; Seaman Tiller; Straw Machine; Vibratory Compactor; Well Drill Machines; & Mud Jacks (Dry & Dry only)

CLASS III: Air Compressors; Air Compressors, Track or Self-propelled; Bulk Cement Batching Plants; Conveyors; Concrete Mixers (except plant, paver, tower); Fireman; Generators; Graders; Light Plants; Mechanical Heaters; Oilers; Power Form Graders; Power Sub-Graders; Pug Mills, when used for other than Asphalt Operations; Rollers (except Bituminous Concrete); Tractors w/o Power Attachments Regardless of size or type; Truck Crane Oiler & Driver 1 (mm); Vibratory Hammer; Water Pumps; Welding Machines (one 300 amp. or over); Welding Machines  
\*COMBINATIONS OF ONE TO FIVE OF ANY AIR COMPRESSORS, CONVEYORS, WELDING MACHINES, WATER PUMPS, LIGHT PLANTS OR GENERATORS SHALL BE IN BATTERIES OR WITHIN 300 FT.

## DECISION NO. IL81-2052

## TRUCK DRIVERS

|           | Basic Hourly Rates | Fringe Benefits Payments |          |           | Education and/or Appr. Tr. |
|-----------|--------------------|--------------------------|----------|-----------|----------------------------|
|           |                    | H & W                    | Pensions | Voc Rehab |                            |
| GROUP I   | \$13.30            | \$1.00                   | \$46.00a |           |                            |
| GROUP II  | 13.70              | 1.00                     | 46.00a   |           |                            |
| GROUP III | 13.90              | 1.00                     | 46.00a   |           |                            |
| GROUP IV  | 14.15              | 1.00                     | 46.00a   |           |                            |

GROUP I: Drivers on 2 Axles hauling less than 9 tons; Air Compressor & Welding Machine incl. those pulled by separate units; Fork Lifts up to 6,000 lbs. cap.; Mechanic Tenders; Pick-ups when hauling materials, tools, or man to and from and on the job site; & Truck Driver Tenders

GROUP II: 2 or 3 Axles hauling more than 9 tons, but hauling less than 16 tons; A-Fram Winches; Fork Lifts over 6,000 lbs. cap.; 4-Axle Combination units; Hydrolifts or similar equipment when used for transportation purposes; & Winches

GROUP III: 2, 3 or 4 Axles hauling 16 tons or more; Dispatcher; 5-Axles or more combination units; Mechanics & Working Foreman; & Water Poles

GROUP IV: Drivers on Oil Distributors; & Drivers on Semi-Lowboys when moving equipment

## FOOTNOTE:

a. Per Week Per Employee

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a) (1) (ii)).



## DECISION NO. ILAI-2049

## FOOTNOTES:

- a. 8 paid holidays: A through F plus Washington's Birthday and Veterans' Day; 6 days vacation with pay for 164 days of service, one additional day of vacation with pay for each of the next 3 periods of 26 days of service, and for 268 days or over of service 13 days of vacation with pay, all in one calendar year. Employees not qualifying for vacation, as set forth above, will receive one day's vacation with pay for each full 24 days of service in one calendar year.
- b. \$9.10 per day, per employee.
- c. 8 paid holidays: A through F plus Washington's Birthday and Veterans' Day; 6 days vacation with pay for 84 days of service, one additional day of vacation with pay for each additional 21 2/3 days of service, all in one calendar year. Employees not qualifying for vacation, as set forth above, are to receive one day's vacation with pay for each full 20 days of service in one calendar year.
- d. 9 paid holidays: A through F plus Washington's Birthday, Veterans' Day, and Paul Hall's Day.
- e. 1/2 day vacation for each full 10 days employment in one calendar year.
- f. \$3.50 per hour in fringe benefits (excluding vacation payments).
- g. 8 paid holidays: A thru F plus Washington's Birthday & Veteran's Day

## PAID HOLIDAYS (WHERE APPLICABLE):

A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day;  
E-Thanksgiving Day; F-Christmas Day.

STATE: Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania and Wisconsin

DECISION NUMBER: ILAI-2038

Supersedes Decision No. ILAI-2049 dated July 7, 1981 on 46FR 30184  
DESCRIPTION OF WORK: Bridging on the Great Lakes, their connecting and tributary waters, including the Illinois Waterway to the lock at Lockport, Illinois, and in the New York State Sarge Canal System between Tonawanda, New York, and Waterford, New York, and Oswego, New York and on the St. Lawrence River Eastward to the International Boundary near St. Regis, New York

|                                                                                                                                                                                                                                                                                                    | Basic Hourly Rates | Fringe Benefits Payments |         |          | Education and/or App. Tr. |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|--------------------------|---------|----------|---------------------------|
|                                                                                                                                                                                                                                                                                                    |                    | M & W                    | Pension | Vacation |                           |
| DIPPER & HYDRAULIC DREDGING:                                                                                                                                                                                                                                                                       |                    |                          |         |          |                           |
| Chief Engineer                                                                                                                                                                                                                                                                                     | 17.97              | .75                      | .70     | a        |                           |
| Operators                                                                                                                                                                                                                                                                                          | 17.83              | .75                      | .70     | a        |                           |
| Assistant Engineer                                                                                                                                                                                                                                                                                 | 17.22              | .75                      | .70     | a        |                           |
| Welder                                                                                                                                                                                                                                                                                             | 17.08              | .75                      | .70     | a        |                           |
| Cranemen - Dipper Dredging                                                                                                                                                                                                                                                                         | 17.08              | .75                      | .70     | a        |                           |
| Spill Sarge Operator - Hydraulic Dredging                                                                                                                                                                                                                                                          | 17.08              | .75                      | .70     | a        |                           |
| DRILL BOATS:                                                                                                                                                                                                                                                                                       |                    |                          |         |          |                           |
| Engineers                                                                                                                                                                                                                                                                                          | 13.22              | .75                      | .70     | c        |                           |
| Blasters                                                                                                                                                                                                                                                                                           | 13.56              | .75                      | .70     | c        |                           |
| Firemen                                                                                                                                                                                                                                                                                            | 12.82              | .75                      | .70     | c        |                           |
| Drillers, Welders or Machinists                                                                                                                                                                                                                                                                    | 13.23              | .75                      | .70     | c        |                           |
| Oilers                                                                                                                                                                                                                                                                                             | 12.61              | .75                      | .70     | c        |                           |
| TUG ENGINEERS - Operators                                                                                                                                                                                                                                                                          | 14.76              | .80                      | .80     | a        |                           |
| TUG OPERATORS - ON LAUNCH                                                                                                                                                                                                                                                                          | 14.34              |                          |         |          |                           |
| FLOATING EQUIPMENT:                                                                                                                                                                                                                                                                                |                    |                          |         |          |                           |
| (Clamshell, Dragline and Marine Construction)                                                                                                                                                                                                                                                      |                    |                          |         |          |                           |
| Engineers and Operators                                                                                                                                                                                                                                                                            | 17.85              | f                        |         |          |                           |
| Equipment Operators                                                                                                                                                                                                                                                                                | 16.05              | f                        |         |          |                           |
| Firemen                                                                                                                                                                                                                                                                                            | 15.15              | f                        |         |          |                           |
| Oilers                                                                                                                                                                                                                                                                                             | 13.35              | f                        |         |          |                           |
| TUG WORKERS:                                                                                                                                                                                                                                                                                       |                    |                          |         |          |                           |
| Firemen, Linemen, Oilers, Deckhands, Scowmen (on/or with Tugboats, Launches or other Selfpropelled Boats)                                                                                                                                                                                          | 14.42              | b                        | 1.00    | .75+d    |                           |
| DREDGE WORKERS:                                                                                                                                                                                                                                                                                    |                    |                          |         |          |                           |
| Firemen, Oiler, Deckhands and Scowmen (with Dipper Dredges, Hydraulic Dredges or other Floating Equipment engaged in Dredging Operations); Pipeline Men (both afloat and shore, including loading, unloading, installing, maintaining and handling pipe lines for Hydraulic Dredges and Sandboats) | 14.42              | b                        | 1.00    | .75+d    |                           |
| Range and Sweepmen, Service Truck Drivers                                                                                                                                                                                                                                                          | 11.20              | b                        | 1.00    | .75+d    |                           |



## SUPERSEDES DECISION

STATE: Kentucky  
 COUNTY: Franklin  
 DECISION NUMBER: KY81-1276  
 DATE: Date of Publication  
 SUPERSEDES Decision Number KY80-1096 dated August 22, 1980 in 45 FR 56283-56285  
 DESCRIPTION OF WORK: Building Construction (does not include single family homes and apartments up to and including four stories)

|                                                                                                                | Basic Hourly Rates | Fringe Benefits Payments |          |          |  | Education and/or Appr. Tr. |
|----------------------------------------------------------------------------------------------------------------|--------------------|--------------------------|----------|----------|--|----------------------------|
|                                                                                                                |                    | H & W                    | Pensions | Vacation |  |                            |
| Asbestos Workers                                                                                               | \$14.45            | .60                      | 1.75     |          |  |                            |
| Boilermakers                                                                                                   | 14.50              | 1.275                    | 1.20     |          |  | .04                        |
| Bricklayers & Stonemasons                                                                                      | 13.30              | .60                      | .50      |          |  |                            |
| Carpenters:                                                                                                    |                    |                          |          |          |  |                            |
| Layers                                                                                                         | 13.40              | .80                      | 1.00     |          |  | .05                        |
| Piledrivers & Millwrights                                                                                      | 13.90              | .80                      | 1.00     |          |  | .05                        |
| Cement Masons                                                                                                  | 12.20              |                          |          |          |  |                            |
| Electricians                                                                                                   | 15.66              | .45                      | 3% + .50 |          |  | .05                        |
| Elevator Constructors:                                                                                         |                    |                          |          |          |  |                            |
| Mechanic                                                                                                       | 14.61              | 1.345                    | .95      | a + b    |  | .035                       |
| Helper                                                                                                         | 10.23              | 1.345                    | .95      | a + b    |  | .035                       |
| Glaziers                                                                                                       | 13.25              |                          |          |          |  |                            |
| Ironworkers                                                                                                    | 13.45              | 1.00                     | 2.85     |          |  | .10                        |
| Lathers                                                                                                        | 11.65              |                          | .10      |          |  |                            |
| Line Construction                                                                                              |                    |                          |          |          |  |                            |
| Linemen & Equipment Oper.                                                                                      | 14.60              | .70                      | 3%       |          |  | $\frac{1}{2}$ of 1%        |
| Cable Splicers                                                                                                 | 14.85              | .70                      | 3%       |          |  | $\frac{1}{2}$ of 1%        |
| Groundmen & Truck Drivers                                                                                      | 11.68              | .70                      | 3%       |          |  | $\frac{1}{2}$ of 1%        |
| Groundmen                                                                                                      | 10.95              | .70                      | 3%       |          |  | $\frac{1}{2}$ of 1%        |
| Marble, Tile & Terrazzo Workers                                                                                | 12.15              | .60                      | .50      |          |  |                            |
| Painters:                                                                                                      |                    |                          |          |          |  |                            |
| Brush, Drywall Finishers & Paperhangers                                                                        | 10.15              | .45                      |          |          |  |                            |
| Steeple Jack Work, Window Jack Work, Work in enclosed buildings over 35' in height from permanent working area | 10.65              | .45                      |          |          |  |                            |
| Sandblasting & Spray                                                                                           | 10.90              | .45                      |          |          |  |                            |
| Plumbers & Pipefitters                                                                                         |                    |                          |          |          |  |                            |
| Western 3/4 of County: including the City of Frankfort                                                         | 16.02              | 1.05                     | 1.05     |          |  | .15                        |
| Plumbers                                                                                                       | 16.21              | .85                      | 1.59     |          |  | .12                        |
| Pipefitters                                                                                                    | 15.63              | .70                      | 1.25     |          |  | .05                        |
| Remainder of County                                                                                            |                    |                          |          |          |  |                            |

KY81-1276 cont.

|                          | Basic Hourly Rates | Fringe Benefits Payments |          |          | Education and/or Appr. Tr. |
|--------------------------|--------------------|--------------------------|----------|----------|----------------------------|
|                          |                    | H & W                    | Pensions | Vacation |                            |
| Roofers:                 |                    |                          |          |          |                            |
| Slate Tile & Precast     | 8.80               | .65                      | .45      |          |                            |
| Concrete Slab            | 9.20               | .65                      | .45      |          |                            |
| Sheet Metal Workers      | 14.58              | 1.619                    | 1.61     |          | .16                        |
| Sprinkler Fitters        | 15.31              | .95                      | 1.40     |          | .08                        |
| Welders - Rate for craft |                    |                          |          |          |                            |

## FOOTNOTES:

- a. Seven Paid Holidays - New Year's Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; Friday after Thanksgiving Day; Christmas Day
- b. Vacation Pay Credit - employer contributes 8% of the basic hourly rate for employees with 5 years or more service; 6% for employees with less than 5 years service

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a) (1) (ii))



KY81-1276 cont.

**Laborers:**

Group I  
Group II  
Group III  
Group IV  
Group V  
Group VI

| Basic Hourly Rates | Fringe Benefits Payments |         |          | Education and/or Appr. Tr. |
|--------------------|--------------------------|---------|----------|----------------------------|
|                    | H & W                    | Pension | Vacation |                            |
| \$10.40            | .45                      |         |          |                            |
| 10.80              | .45                      | .80     |          |                            |
| 11.00              | .45                      | .80     |          |                            |
| 11.10              | .45                      | .80     |          |                            |
| 11.60              | .45                      | .80     |          |                            |
| 11.90              | .45                      | .80     |          |                            |

**LABORERS' CLASSIFICATION DEFINITIONS**

Group I - General Laborers, water boys, concrete pouring, concrete forms stripping and wrecking, hand digging and backfilling of ditches, clearing of right-of-ways and building sites, wood sheathing and shoring, signalman for concrete bucket, and general cleaning

Group II - All air tool operators, air track drills, asphalt rakers, barco tamers, batcher plant and scale man, chain saw, concrete saw, electric hand grinder, all electric bush and chipping hammers, flagman, forklift operators, form setter (street or highway), gunnite laborers, hand spiker, introflax burning rod, joint makers, mason tenders, pipe layers, plasterer tenders, powderman helpers, power driven Georgia Buggies, power posthole digger, railroad laborers, sandblaster laborers, scow man & deck hand, signal man, sweeper & cleaner machines, vibrator operators, walk behind trenching machines, mortar mixer machines, water pumpman

Group III - Gunnite nozzleman & gunnite nozzle machine operator, sand blaster nozzleman, concrete or grout pumpman, plaster pumpman.

Group IV - Powderman & Blaster

Group V - Caisson bores (6 ft. & over) pressure & free air including tools

Group VI - Tunnel man & tunnel sand miner, cofferdam (pressure & free air), sand bog or mucker (pressure or free air)

KY81-1276 cont.

**POWER EQUIPMENT OPERATORS**

Class A  
Class B  
Class C

| Basic Hourly Rates | Fringe Benefits Payments |         |          | Education and/or Appr. Tr. |
|--------------------|--------------------------|---------|----------|----------------------------|
|                    | H & W                    | Pension | Vacation |                            |
| \$14.27            | .65                      | 1.20    |          | .08                        |
| 11.53              | .65                      | 1.20    |          | .08                        |
| 10.76              | .65                      | 1.20    |          | .08                        |

**CLASSIFICATION DEFINITIONS**

Class A - Auto Patrol, batcher plant, bituminous paver, cableway, central compressor plant, clamshell, concrete mixer (21 cu. ft. or over), concrete pump, crane, crusher plant, derrick, derrick boat, ditching and trenching machine, dragline, dredge operator, dredge engineer, elevating grader and all types of loaders, hoe type machine hoist (1-drum when used for stack or chimney construction or repair), hoisting engine (2 or more drums), locomotive, motor scraper, carry-all scoop, bulldozer, heavy duty welder, mechanic, orange-peel bucket, pile driver, power blade, motor grader, roller (bituminous), scarifier, shovel, tractor shovel, truck crane, winch truck, push dozer, highlift, forklift (regardless of lift height and except when used for masonry construction) all types of boom cats, core drill, hopper, tow or push boat, A-frame winch truck, concrete paver, gradeall, hoist, hystar, pumpcrete, Ross carrier, boom, tail boom, rotary drill, hydro hammer, macking machine, rock spreader attached to equipment, scoopmobile, Kecal loader, tower cranes (French, German and other types), hydrocrane, backfiller, gruries, sub-grader, tunnel mining machines including moles, shields or similar types of tunnel mining equipment

Class B - All air compressors (over 900 cu. ft. per min.), bituminous mixer, joint sealing machine, concrete mixer (under 21 cu. ft.), form grader, roller (rock), tractor (50 hp and over), bull float, finish machine, outboard motor board, flexplane, fireman, boom type tamping machine, truck crane oiler, greaser on grease facilities servicing heavy equipment, switchman or brakeman, mechanic helper, whirley oiler, self-propelled compactor, tractor and road widening trencher and farm tractor with attachments except backhoe, highlift and end-loader, elevator (regardless of ownership when used for hoisting any building material) hoisting engine (1-drum or buck hoist), forklift (when used for masonry construction), well points, grout pump, throttle-valve man, tugger, electric vibrator compactor

Class C - Bituminous distributor, cement gun, conveyor, mud jack, paving joint machine, roller (earth), tamping machine, tractors (under 50hp), vibrator, oiler, concrete saw, barlap and curing machine, hydro-seeder, power form handling equipment, deckhand steersman, hydraulic post driver, drill helper



KY81-1275 cont.

STATE: Kentucky  
 DECISION NUMBER: KY81-1275  
 Supersedes Decision Number: KY80-1097 dated August 22, 1980, in 45 FR 56274-75  
 COUNTY: Fayette  
 DATE: Date of Publication  
 DESCRIPTION OF WORK: Building Construction (does not include single family homes and apartments up to and including four stories)

|                                                                                                                 | Basic Hourly Rates | Fringe Benefits Payments |          |          |         | Education and/or App. Tr. |
|-----------------------------------------------------------------------------------------------------------------|--------------------|--------------------------|----------|----------|---------|---------------------------|
|                                                                                                                 |                    | M & W                    | Pensions | Vacation |         |                           |
| family homes and apartments up to and including four stories)                                                   |                    |                          |          |          |         |                           |
| Asbestos Workers                                                                                                | \$14.45            | .60                      | 1.75     |          |         |                           |
| Boilermakers                                                                                                    | 14.50              | 1.275                    | 1.20     |          | .04     |                           |
| Bricklayers & Stonemasons                                                                                       | 13.30              | .60                      | .50      |          |         |                           |
| Carpenters:                                                                                                     |                    |                          |          |          |         |                           |
| Carpenters & Soft Floor Layers                                                                                  | 13.40              | .80                      | 1.00     |          | .05     |                           |
| Piledriversmen & Millwrights                                                                                    | 13.90              | .80                      | 1.00     |          | .05     |                           |
| Cement Masons                                                                                                   | 12.20              |                          |          |          |         |                           |
| Electricians                                                                                                    | 15.66              | .45                      | 3% + .50 |          | .05     |                           |
| Elevator Constructors                                                                                           |                    |                          |          |          |         |                           |
| Mechanics                                                                                                       | 14.61              | 1.345                    | .95      | a + b    | .035    |                           |
| Helpers                                                                                                         | 10.23              | 1.345                    | .95      | a + b    | .035    |                           |
| Glaziers                                                                                                        | 13.25              |                          |          |          |         |                           |
| Ironworkers                                                                                                     | 13.45              | 1.00                     | 2.85     |          | .10     |                           |
| Line Construction:                                                                                              |                    |                          |          |          |         |                           |
| Linenmen & Equipment Operators                                                                                  | 14.60              | .70                      | 3%       |          | % of 1% |                           |
| Cable Splicers                                                                                                  | 14.85              | .70                      | 3%       |          | % of 1% |                           |
| Groundmen-Truck Drivers                                                                                         | 11.68              | .70                      | 3%       |          | % of 1% |                           |
| Groundmen                                                                                                       | 10.95              | .70                      | 3%       |          | % of 1% |                           |
| Marble, Tile & Terrazzo Workers                                                                                 | 12.15              | .60                      | .50      |          |         |                           |
| Marble, Tile & Terrazzo Finishers                                                                               | 10.60              |                          |          |          |         |                           |
| Painters:                                                                                                       |                    |                          |          |          |         |                           |
| Brush, Drywall Finishers, Paperhangers                                                                          | 9.90               | .45                      |          |          |         |                           |
| Steeple Jack Work, Window Jack Work, Work in enclosed buildings over 15' in height above permanent working area |                    |                          |          |          |         |                           |
| Sandblasting & Spray Plumbers & Pipefitters                                                                     | 10.30              | .45                      |          |          | .05     |                           |
| Roofers                                                                                                         | 10.55              | .45                      | 1.25     |          | .02     |                           |
| Sheet Metal Workers                                                                                             | 14.63              | .70                      |          |          | .16     |                           |
| Sprinkler Fitters                                                                                               | 10.40              | .75                      | 1.61     |          | .08     |                           |
| Welders - Rate for craft                                                                                        | 14.58              | 1.619                    | 1.40     |          |         |                           |
|                                                                                                                 | 15.31              | .95                      |          |          |         |                           |

## LABORERS' CLASSIFICATION DEFINITIONS

Group I - General Laborers, water boys, concrete pouring, concrete forms stripping and wrecking, hand digging and backfilling of ditches, clearing of right-of-ways and building sites, wood sheeting and shoring, signalman for concrete bucket, and general cleaning

Group II - All air tool operators, air track drills, asphalt rakers, barco tamers, batcher plant and scale man, chain saw, concrete saw, electric hand grinder, all electric bush and chipping hammers, flagman, forklift operators, form setter (street or highway), gunnite laborers, hand spiker, introflax burning rod, joint makers, mason tenders, pipe layers, plasterer tenders, powderman helpers, power driven Georgia Baggies, power posthole digger, railroad laborers, sandblaster laborers, scow man & deck hand, signal man, sweeper & cleaner machines, vibrator operators, walk behind trenching machines, mortar mixer machines, water pumpman

Group III - Gunnite nozzleman & gunnite nozzle machine operator, sand blaster nozzleman, concrete or grout pumpman, plaster pumpman,

Group IV - Powderman & Blaster

Group V - Caisson holes (6 ft. & over) pressure & free air including tools

Group VI - Tunnel man & tunnel sand miner, cofferdam (pressure & free air), sand hog or mucker (pressure or free air)

## FOOTNOTES:

- a. Seven Paid Holidays - New Year's Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; Friday after Thanksgiving Day; Christmas Day
- b. Vacation Pay Credit - employer contributes 8% of the basic hourly rate for employees with 5 years or more service; 6% for employees with less than 5 years service

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a) (1) (ii))



KY81-1275 cont.

## POWER EQUIPMENT OPERATORS

Class A  
Class B  
Class C

| Basic Hourly Rates | Fringe Benefits Payments |         |          | Education and/or Appr. Tr. |
|--------------------|--------------------------|---------|----------|----------------------------|
|                    | M & W                    | Pension | Vacation |                            |
| \$14.27            | .65                      | 1.20    |          | .08                        |
| 11.53              | .65                      | 1.20    |          | .08                        |
| 10.76              | .65                      | 1.20    |          | .08                        |

## CLASSIFICATION DEFINITIONS

**Class A** - Auto Patrol, batcher plant, bituminous paver, cableway, central compressor plant, clamshell, concrete mixer (21 cu. ft. or over), concrete pump, crane, crusher plant, derrick, derrick boat, ditching and trenching machine, dragline, dredge operator, dredge engineer, elevating grader and all types of loaders, hoe type machine hoist (1-drum when used for stack or chimney construction or repair), hoisting engine (2 or more drums), locomotive, motor scraper, carry-all scoop, bulldozer, heavy duty welder, mechanic, orangepeel bucket, pile driver, power blade, motor grader, roller (bituminous), scarifier, shovel, tractor shovel, truck crane, winch truck, push dozer, highlift, forklift (regardless of lift height and except when used for masonry construction) all types of boom cats, core drill, hopto, tow or push boat, A-frame winch truck, concrete paver, gradeall, hoist, hystar, pumpcrete, Ross carrier, boom, tail boom, rotary drill, hydro hammer, mucking machine, rock spreader attached to equipment, scoopmobile, Kecal loader, tower cranes (French, German and other types), hydrocrane, backfiller, guries, sub-grader; tunnel mining machines including moles, shields or similar types of tunnel mining equipment

**Class B** - All air compressors (over 900 cu. ft. per min.), bituminous mixer, joint sealing machine, concrete mixer (under 21 cu. ft.), form grader, roller (rock), tractor (50 hp and over), bull float, finish machine, outboard motor board, flexplane, fireman, boom type tamping machine, truck crane oiler, greaser on grease facilities servicing heavy equipment, switchman or brakeman, mechanic helper, whirley oiler, self-propelled compactor, tractor and road widening trencher and farm tractor with attachments except backhoe, highlift and endloader, elevator (regardless of ownership when used for hoisting any building material) hoisting engine (1-drum or buck hoist), forklift (when used for masonry construction), well points, grout pump, throttle-valve man, tugger, electric vibrator compactor;

**Class C** - Bituminous distributor, cement gun, conveyor, mud jack, paving joint machine, roller (earth), tamping machine, tractors (under 50hp), vibrator, oiler, concrete saw, barleap and curing machine, hydro-seeder, power form handling equipment, deckhand steersman, hydraulic post driver, drill helper

## SUPERSEDES DECISION

STATE: MARYLAND

COUNTIES: ALLEGANY,

GARRETT AND WASHINGTON

DECISION NO.: MD81-3052  
Supersedes Decision No. MD77-3085 dated July 1, 1977 in 42 FR 34195  
DESCRIPTION OF WORK: Residential Construction consisting of single family houses and apartments up to and including 4 stories

|                                        | Fringe Benefits Payments |       |         | Education and/or Appr. Tr. |
|----------------------------------------|--------------------------|-------|---------|----------------------------|
|                                        | Basic Hourly Rates       | M & W | Pension | Vacation                   |
| AIR CONDITIONING MECHANICS             | 7.32                     |       |         |                            |
| BRICKLAYERS                            | 8.00                     |       |         |                            |
| CARPENTERS                             | 6.58                     |       |         |                            |
| CEMENT MASONS                          | 7.21                     |       |         |                            |
| DRY WALL HANGERS & FINISHERS           | 7.00                     |       |         |                            |
| ELECTRICIANS                           | 6.80                     |       |         |                            |
| IRONWORKERS, STRUCTURAL AND ORNAMENTAL | 7.50                     |       |         |                            |
| LABORERS                               | 4.73                     |       |         |                            |
| PAINTERS, BRUSH                        | 5.02                     |       |         |                            |
| PLUMBERS                               | 6.00                     |       |         |                            |
| ROOFERS                                | 9.00                     |       |         |                            |
| SHEET METAL WORKERS                    | 5.11                     |       |         |                            |
| SOFT FLOOR LAYERS                      | 7.00                     |       |         |                            |
| TILE SETTERS                           | 8.50                     |       |         |                            |
| TRUCK DRIVERS                          | 5.28                     |       |         |                            |
| POWER EQUIPMENT OPERATORS:             |                          |       |         |                            |
| Backhoe                                | 5.50                     |       |         |                            |
| Bulldozer                              | 6.00                     |       |         |                            |
| Grader                                 | 6.00                     |       |         |                            |
| Loader                                 | 6.00                     |       |         |                            |



## SUPERSEDES DECISION

STATE: MARYLAND LOCATION: BALTIMORE CITY  
 DECISION NO.: MD81-3056 DATE: DATE OF PUBLICATION  
 Supersedes Decision NO. MD81-3004 dated February 6, 1981 in 46 FR 11477

DESCRIPTION OF WORK: Highway Construction Projects (excluding tunnels, building structures in rest area projects and railroad construction; bascule, suspension and spandrel arch bridges; bridges designed for commercial navigation; bridges involving marine construction; and other major bridges)

|                                                                                                   | Basic Hourly Rates | Fringe Benefits Payments |          |          | Education and/or Appr. Tr. |
|---------------------------------------------------------------------------------------------------|--------------------|--------------------------|----------|----------|----------------------------|
|                                                                                                   |                    | H & W                    | Pensions | Vacation |                            |
| BRICKLAYERS                                                                                       | 13.43              | .90                      | .75      |          | .07                        |
| CARPENTERS                                                                                        | 12.65              | .75                      | .69      |          | .07                        |
| CEMENT MASONS                                                                                     | 12.47              | .83                      | 1.00     |          | .04                        |
| ELECTRICIANS                                                                                      | 13.80              | .90                      | 34+1.30  |          | .54                        |
| IRONWORKERS:                                                                                      |                    |                          |          |          |                            |
| Structural and Reinforcing                                                                        | 13.11              | .90                      | 2.30     |          | .06                        |
| Fence Erectors                                                                                    | 12.76              | .90                      | 2.30     |          | .06                        |
| LABORERS:                                                                                         |                    |                          |          |          |                            |
| Laborers                                                                                          | 7.40               | .35                      | .60      |          | .075                       |
| Power Tool Operators                                                                              | 7.50               | .35                      | .60      |          | .075                       |
| Pipelayers, Wagon Drill Operators, Air Track Drillers, Burners (demolition)                       | 7.90               | .35                      | .60      |          | .075                       |
| Mason Tenders & Mortar Mixers (brick & stone work only)                                           | 9.50               | .35                      | .50      |          | .075                       |
| Jackhammer Operators-80# and over                                                                 | 7.65               | .35                      | .60      |          | .075                       |
| LINE CONSTRUCTION:                                                                                |                    |                          |          |          |                            |
| Linemen, Cable Splicers, Digging and Equipment Operators                                          | 15.30              | .70                      | 34       |          |                            |
| Truck with winch, truck with poles or steel handling                                              | 10.25              | .70                      | 34       |          |                            |
| Truck without winch                                                                               | 9.56               | .70                      | 34       |          |                            |
| Groundman                                                                                         | 9.64               | .70                      | 34       |          |                            |
| PAINTERS:                                                                                         |                    |                          |          |          |                            |
| Brush and Roller                                                                                  | 11.20              | 1.10                     | .70      |          | .09                        |
| Steel, spray, swinging stages, boatswain chair, sand & waterblasting, steam cleaning, and epoxies | 11.95              | 1.10                     | .70      |          | .09                        |
| Ames tool - barooks                                                                               | 12.20              | 1.10                     | .70      |          | .09                        |
| SIGN ERECTORS                                                                                     | 9.18               |                          | 34       | a+b      | 14                         |

## DECISION NO. MD81-3056

## TRUCK DRIVERS:

Pick-up  
 Dump, water, fuel, and tube trucks, sweeper, boring machine and miscellaneous equipment  
 Drop frame gooseneck and trailer  
 Euclid wagon and dumpster

| Basic<br>Hourly<br>Rates | Fringe Benefits Payments |          |          |  | Education<br>and/or<br>Appr. Tr. |
|--------------------------|--------------------------|----------|----------|--|----------------------------------|
|                          | H & W                    | Pensions | Vacation |  |                                  |
| 8.83                     | 1.10                     | 1.10     | c+d      |  |                                  |
| 9.08                     | 1.10                     | 1.10     | c+d      |  |                                  |
| 9.31                     | 1.10                     | 1.10     | c+d      |  |                                  |
| 9.44                     | 1.10                     | 1.10     | c+d      |  |                                  |

## FOOTNOTES:

- Paid Holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day, Good Friday, Friday after Thanksgiving and employee's birthday.
- Vacation: One week per year after 1 year of service, 2 weeks after 3 years of service and 3 weeks after 10 years of service.
- Paid Holidays: New Year's Day, Good Friday, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, Christmas Eve, Christmas Day, and employee's birthday, providing employee has worked one day and was available for work during the holiday week.
- Vacation: Employees who have worked 100 days in the previous contract year and have 1 year of service, 1 week's paid vacation; 2 years of service, 2 weeks paid vacation; 10 years of service, 3 weeks paid vacation.



## DECISION NO. MD81-3056

## POWER EQUIPMENT OPERATORS:

Group I  
Group II  
Group III  
Group IV

| Basic<br>Hourly<br>Rates | Fringe Benefits Payments |          |          | Education<br>and/or<br>Appr. Tr. |
|--------------------------|--------------------------|----------|----------|----------------------------------|
|                          | H & W                    | Pensions | Vocation |                                  |
| 11.64                    | 1.00                     | 1.15     |          | .15                              |
| 11.06                    | 1.00                     | 1.15     |          | .15                              |
| 10.39                    | 1.00                     | 1.15     |          | .15                              |
| 9.15                     | 1.00                     | 1.15     |          | .15                              |

## POWER EQUIPMENT OPERATOR CLASSIFICATIONS

Group I - Backfiller, backhoe, batching plants, cableway, Case type hoe (with a front end bucket over 1 1/4 yds.), concrete mixing plants, concrete paver, derrick, derrick boat, double concrete pump, dragline, elevating grader, excavating scoop (25 yds. and over), front end loader (1 - 3/4 yds. and over), grader, gradall, hoist (2 active drums or more), pile driving machine, power crane, power shovel, repair mechanic, standards gauge locomotive, trenching machine, tunnel mucking machine, twin engine scoop, welder, whirley rig and bulldozers (D-9 or equivalent and above).

Group II - Asphalt spreader, bull float, Case type hoe (with a front end bucket 1 - 1/4 yds. and under), concrete mixer (with a slip), concrete pump, concrete spreader, ditch-witch type trencher, excavating scoop (under 25 yds.), finishing machine, front end loader (under 1 - 3/4 yds.), grout pump, hi-lift, longitudinal float, narrow gauge locomotive, one drum hoist, power roller on hot mix asphalt, screeding machine, stone crusher, stone spreader, tractor with attachments (2 or more provided both attachments are being used), subgrader, well-drill and all bulldozers except D-9 or equivalent and above.

Group III - Compressors, conveyors, firemen, fueltruck, grease truck, light plants, mighty midjet with compressor, space heaters, welding machines, wellpoint system and all power rollers except on hot mix asphalt.

Group IV - Others (all types)

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

[FR Doc. 81-29450 Filed 8-13-81; 8:45 am]

BILLING CODE 4510-27-C



Friday  
August 14, 1981

# Registered Federal Trade

## Part III

### Federal Trade Commission

Trade Regulation Rule; Sale of Used  
Motor Vehicles



## FEDERAL TRADE COMMISSION

## 16 CFR Part 455

## Trade Regulation Rule; Sale of Used Motor Vehicles

AGENCY: Federal Trade Commission.

ACTION: Final Trade Regulation Rule.

**SUMMARY:** The Federal Trade Commission issues a final Rule, the purpose of which is to reduce oral misrepresentations, and consumer reliance thereon, in the used car transaction by providing consumers with accurate information concerning warranty coverage and the dealer's knowledge of certain mechanical defects. The Rule requires used car dealers to disclose, on a window sticker ("Used Car Buyers Guide") posted on used cars offered for sale to consumers, information about the warranty coverage offered and the meaning of an "as is" sale; certain mechanical condition defects known to the dealer; and other related information.

This notice contains the Rule's Statement of Basis and Purpose, the text of the Rule, and a Regulatory Analysis relating to the final Rule.

**EFFECTIVE DATE:** This Rule is being submitted to the Congress for review in accordance with section 21 of the Federal Trade Commission Improvements Act of 1980, 15 U.S.C. 57a-1. Under that section, a rule becomes effective unless both Houses of Congress disapprove the rule within 90 calendar days of continuous session after the rule is submitted. Because computation of the 90-day period is not possible in advance (see section 21(g) of the Improvements Act), the Commission cannot specify an effective date for this Rule. The Commission intends that it become effective six months after the conclusion of congressional review and will publish a further notice of effective date in the *Federal Register* as soon as possible thereafter.

**ADDRESS:** Requests for copies of the Rule, the Statement of Basis and Purpose, and the Regulatory Analysis should be sent to Public Reference Branch, Room 130, Federal Trade Commission, 6th Street and Pennsylvania Avenue NW., Washington, D.C. 20580.

**FOR FURTHER INFORMATION CONTACT:** Susan M. Liss, Division of Product Reliability, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580 (202) 523-1670.

**SUPPLEMENTARY INFORMATION:** Statement of Basis and Purpose.

## Trade Regulation Rule Concerning the Sale of Used Motor Vehicles—Statement of Basis and Purpose

## I. Introduction

**A. Overview of the Rule.** In recent years, more than ten million used cars have been sold annually by franchised and independent dealers. For many consumers, the purchase of a used car represents a substantial, necessary investment in a reliable means of transportation. Despite the significance of this investment and the relative unfamiliarity of most consumers with the mechanical operation of an automobile, used car buyers currently receive little accurate warranty and mechanical condition information to assist them in their purchase. Consumers' ability to obtain this information has been hampered by various deceptive practices identified during the course of this rulemaking proceeding; as the record establishes, these practices have resulted in substantial consumer injury in the used car market. To correct these deceptive practices in the used car industry, it is necessary to promulgate the accompanying Trade Regulation Rule. By providing for the disclosure at the point of sale of information concerning the extent of warranty coverage and certain major mechanical condition defects known to the dealer, the Commission believes that used car dealers will be discouraged from engaging in deceptive practices established in the record. Instead, used car buyers will be able to make informed purchasing decisions based on accurate and complete information about warranty protection offered by and disclosure of serious defects known to the dealer.

The record demonstrates that used car dealers and their agents have engaged in deceptive sales practices. They often:

- (1) Misrepresent the mechanical condition of a used vehicle;
- (2) Fail to disclose, prior to sale, any material defect in the mechanical condition of the used vehicle known to the dealer;
- (3) Represent that a used vehicle, or any system thereof, is free from material defects in the mechanical condition at the time of the sale without a reasonable basis for such representation at the time it is made;
- (4) Fail to make available, prior to sale, the terms of any written warranty offered in connection with the sale of a used vehicle;
- (5) Misrepresent the terms of any warranty offered in connection with the sale of a used vehicle;

(6) Represent that a used vehicle is sold with a warranty when the vehicle is sold without a warranty;

(7) Fail to disclose, prior to sale, that a used vehicle is sold without any warranty.

The Commission has concluded that these acts and practices are deceptive within the meaning of Section 5 of the Federal Trade Commission Act and are appropriately remedied by the Trade Regulation Rule being promulgated today.

The primary purpose of this Rule is to prevent and discourage oral misrepresentations and deceptive omissions of material facts by used car dealers concerning warranty coverage and mechanical condition. The Rule provides a uniform method for written disclosure of such information by means of a Used Car Buyers Guide ("Buyers Guide"). The Rule requires clear disclosure through the Buyers Guide of the existence of any warranty coverage and of the terms and conditions of any warranty offered in connection with the sale of a used car, including the duration of coverage and the percentage of total repair costs to be paid by the dealer. The Rule also includes certain additional disclosures that are incorporated on the Buyers Guide, including a list of the fourteen major systems of an automobile; a suggestion that consumers ask the dealer if a prepurchase inspection is permitted; and a warning against reliance on spoken promises that are not confirmed in writing. When the used car transaction is conducted in Spanish, the Rule requires that a Spanish-language version of the Buyers Guide be provided to the consumer, and the Rule includes a text for a Spanish-language version. In addition, the Rule provides that the Buyers Guide disclosures are to be incorporated by reference into the sales contract, and are to govern in the event of an inconsistency between the Buyers Guide and the sales contract. The Rule further requires dealers to give copies of the Buyers Guide reflecting the final terms of sale to the consumer. Finally, the Rule requires that the dealer disclose on the Buyers Guide certain known defects in a used car offered for sale; those defects that must be disclosed, if known, are listed in the text of the Rule and on the back of the Buyers Guide.

This overview has highlighted the central elements of the Rule. Virtually all other provisions of the Rule, including certain definitions, are designed to ensure the integrity of this disclosure scheme. The Rule promulgated today is altered from both



the mandatory inspection rule proposed by the rulemaking staff in 1978 and the optional inspection rule tentatively adopted by the Commission in May, 1980. The Commission believes that this Rule, which requires that warranty and known defect information be provided in written form, will effectively curb many of the deceptive practices identified in the rulemaking record with minimal intrusion into the business operations of used car dealers.

**B. Historical Background.** The used car rulemaking proceeding grew out of an investigation begun by the Commission's Seattle Regional Office in 1973. That investigation resulted in a 1973 report which recommended that the Commission, pursuant to its authority under Section 6(g) of the FTC Act,<sup>1</sup> regulate the sale of used cars through a system of required inspections by dealers, disclosure of defects, and mandatory warranties on parts found to be without defects.<sup>2</sup> Subsequently, at the Commission's direction, the staff of the Bureau of Consumer Protection in Washington, D.C. continued the investigation.

In 1975, during the pendency of the staff investigation, the Magnuson-Moss Warranty—Federal Trade Commission Improvement Act ("Magnuson-Moss Act") became effective.<sup>3</sup> In Title I of the Magnuson-Moss Act, Congress directed the Commission to initiate a rulemaking proceeding dealing with "warranties and warranty practices in connection with the sale of used motor vehicles."<sup>4</sup> This statutory directive expressly authorized the Commission to proceed under both Title I of the Magnuson-Moss Act and any other statutory authority available to the Commission.<sup>5</sup>

An Initial Staff Report by the staff of the Bureau of Consumer Protection was published in December, 1975. In that report, the staff recommended that the Commission initiate a rulemaking proceeding.<sup>6</sup> The Initial Staff Report described warranty practices, as well as a variety of other practices related to the sale of used cars, which, in the staff's opinion, violated Section 5 of the

Federal Trade Commission Act,<sup>7</sup> as well as Title I of the Magnuson-Moss Act.

In compliance with the congressional directive, the Commission, after reviewing the Initial Staff Report, published an Initial Notice of Proposed Rulemaking ("Initial Notice") on January 6, 1976.<sup>8</sup> The Initial Notice proposed a Trade Regulation Rule designed to remedy the allegedly unlawful practices through (1) a "window sticker" posted on each used car disclosing warranty terms, warranty disclaimers, prior use of the vehicle, mileage, prior repairs, and dealer identification information; and (2) a specified form of warranty disclaimer to be used in "as is" sales contracts. Additional remedies suggested for public comment in the Initial Notice included disclosure of mechanical defect information and a "pre-purchase inspection opportunity" which would have given consumers the right to take a car to a third party for inspection prior to purchase.

The Commission amended the Initial Notice with the publication of additional questions for public comment in a May 21, 1976 Federal Register notice ("Second Notice").<sup>9</sup> These additional questions focused on whether dealers should be required to disclose known defects and to disclose whether or not each car had been inspected for defects. The questions also sought comment on the best format for communicating the disclosures to the consumer. Other questions published in this Second Notice asked whether the Vehicle Identification Number (VIN) should be added to the form and whether disclosures should be required in sales of used cars between dealers.

Following publication of the Second Notice, the staff attempted to focus public comment by preparing and circulating to interested parties a suggested format (in the form of a window sticker)<sup>10</sup> for the disclosures proposed in the Initial and Second Notice. A Final Notice establishing the dates and locations of public hearings, setting the final date for receipt of written comments, and designating issues for consideration in accordance with §§ 1.13(d) (5) and (6) of the Commission's Rules of Practice, 16 CFR 1.13(d) (5) and (6), was published on September 15, 1976.<sup>11</sup>

Written comments on the Initial and Second Notices and on the suggested

format were received through October 22, 1976. Numerous comments were made by consumers, used car dealers, dealer associations, consumer groups, state and local law enforcement officials, members of Congress, legal aid attorneys, auto rental and leasing associations, federal agencies and other interested parties. Books, articles, research reports, and interviews conducted by Commission staff were also submitted for the rulemaking record.<sup>12</sup>

Following the written comment period, public hearings were held in six cities from December 6, 1976 through May 4, 1977.<sup>13</sup> All witnesses were given an opportunity to make an opening presentation followed by cross-examination conducted by Commission staff and by designated representatives of used car dealers, the auto rental and leasing industries, and consumer groups.<sup>14</sup> Rebuttal statements were accepted after the hearings until August 31, 1977.<sup>15</sup>

The written comments, the materials placed on the record by the Presiding Officer and the Commission staff, the hearing transcripts and exhibits, and the rebuttal statements comprise the principal evidentiary record of this proceeding. After the receipt of rebuttal statements, reports to the Commission based on the rulemaking record were prepared by the Presiding Officer,<sup>16</sup> who made findings on the issues which had been designated by the Commission for the public hearings, and by the Commission staff,<sup>17</sup> who summarized

<sup>12</sup> The written comments and other written materials are filed in categories "C-M" of the rulemaking record and are contained in volumes 215-54-1-3 through 215-54-1-13.

<sup>13</sup> Hearings were held in Boston, Cleveland, Dallas, Los Angeles, San Francisco, and Washington, D.C. The transcripts of the hearings were filed in Category "P" of the proceeding and are contained in volumes labeled 215-54-1-16.

<sup>14</sup> The designated representatives were Automobile Owners Action Council; San Francisco Consumer Action and California Public Interest Research Group; Car and Truck Renting and Leasing Association; American Automotive Leasing Association; and National Automobile Dealers Association.

<sup>15</sup> Rebuttal statements are filed in Category "Q" of the record and are contained in volumes labeled 211-54-1-17.

<sup>16</sup> Report of the Presiding Officer on Proposed Trade Regulation Rule For Sale of Used Motor Vehicles (16 CFR Part 455), May 22, 1978 [hereinafter cited as "Presiding Officer's Report"]. Notice of publication of the Presiding Officer's Report was given on June 30, 1978. 43 FR 28521 (1978).

<sup>17</sup> Sale of Used Motor Vehicles, Final Staff Report to the Federal Trade Commission and Proposed Trade Regulation Rule (16 CFR Part 455), September, 1978 [hereinafter cited as "Staff Report"]. Notice of publication of the Staff Report was given on November 14, 1978. 43 FR 52729 (1978).

Continued

<sup>1</sup> 15 U.S.C. 46(g).

<sup>2</sup> Seattle Regional Office Used Car Analytical Programming Guide (September 17, 1973).

<sup>3</sup> Pub. L. No. 93-637 (Jan. 4, 1975), codified at 15 U.S.C. 2301 et seq.

<sup>4</sup> 15 U.S.C. 2309(b).

<sup>5</sup> *Id.*

<sup>6</sup> Staff Report on the Use Motor Vehicle Industry: Proposed Trade Regulation Rule and Staff Memorandum [hereinafter cited as "Initial Staff Report"]. The rulemaking record of this proceeding has been designated No. 215-54 in the Commission's Public Reference Branch. The Initial Staff Report and related documents are filed in category B of the record and are contained in volumes labeled 215-54-1-2.

<sup>7</sup> 15 U.S.C. 45.

<sup>8</sup> 41 FR 1089 (1976).

<sup>9</sup> 41 FR 20896 (1976). The publication of the Second Notice resulted from early comment criticizing the initial proposed rule.

<sup>10</sup> See Staff Report at Appendix D, *infra* n. 17.

<sup>11</sup> 41 FR 39337 (1976).



and analyzed the record evidence and made recommendations to the Commission for a Trade Regulation Rule.

The Presiding Officer found, *inter alia*, that many used car dealers misrepresent or fail to disclose material facts relating to the mechanical condition of used cars and the dealer's responsibility for making repairs after sale. The staff, after coming to a similar conclusion, recommended a revised Trade Regulation Rule which would have required mandatory inspection and disclosure of defects regarding certain mechanical and safety components of used cars. The revised rule would have also required disclosures of warranty coverage, repair cost estimates, prior use, mileage, availability of service contracts, vehicle identification information, and dealership identification information. These disclosures were to be made on a "window sticker" attached to the side window of the used car.

Pursuant to Section 1.13(h) of the Commission's Rules of Practice, 16 CFR 1.13(h), publication of the Final Staff Report initiated a sixty-day comment period which afforded the public an opportunity to comment on the reports of the Presiding Officer and the staff. This comment period was originally scheduled to close on January 4, 1979. In order to allow additional time for comments, including comments on an FTC Bureau of Economics report placed on the record on January 5, 1979, the Commission extended the comment period for thirty days to February 13, 1979.<sup>18</sup>

On July 26, 1979, the staff's summary of post-record comments, memorandum recommending modifications in the proposed rule, and a memorandum from the Director of the Bureau of Consumer Protection outlining an alternative "optional inspection" rule were forwarded to the Commission. On September 25, 1979, the Commission heard oral presentations from selected rulemaking participants who had been invited to present their views directly to the Commission as provided in Section 1.13(i) of the Commission's Rules, 16 CFR 1.13(i).<sup>19</sup> On October 11, 1979, the

Commission met to consider whether to adopt a final rule, and if so, what form the rule should take. Although no final determination was made during that meeting, the Commission rejected the mandatory inspection approach recommended by staff and directed the staff to analyze an optional inspection rule.<sup>20</sup>

On April 4, 1980, the staff forwarded to the Commission a memorandum recommending adoption of an optional inspection rule. On May 16, 1980, the Commission met to consider the redrafted rule and, with certain modifications, tentatively adopted the staff recommendations.<sup>21</sup> The Commission further directed the staff to prepare a request for technical comment by the public on the likely effectiveness of the optional inspection proposal, the format and comprehensibility of the proposed disclosure form and any drafting errors in the text of the proposed Rule. Pursuant to § 1.14(a) of the Commission's Rules of Practice, 16 CFR 1.14(a), the Commission published the request for comment in the August 7, 1980 Federal Register.<sup>22</sup> Comments were accepted through November 7, 1980.<sup>23</sup>

On January 14, 1981, the staff forwarded to the Commission a summary of the technical comments and final recommendations for modifying the proposed optional inspection rule in light of those comments. A supplemental recommendations memo and revised summary of comments was forwarded by staff to the Commission on February 20, 1981. On April 14, 1981, the Commission met and determined not to adopt the "optional inspection rule". In its place, the Commission approved in substance the Rule promulgated today. That Rule requires, by means of a window sticker, the disclosure of warranty information and the disclosure

of certain major defects known to the dealer at the time of sale.<sup>24</sup> At the same meeting, the Commission directed the staff to revise the list of defects which must be disclosed if known; to contract for consumer testing of the comprehensibility of the window sticker; to conform the text of the Rule to the concepts adopted in substance by the Commission; and to return the Rule and the Statement of Basis and Purpose to the Commission for promulgation. After careful consideration and review of the rulemaking record taken as a whole, the Commission has voted to promulgate a Trade Regulation Rule concerning the sale of used motor vehicles.

*C. Description of the Industry.* With new car prices steadily rising, the used car market has become an increasingly attractive source of personal transportation for consumers. The most recently published industry data show that three of every four used car purchasers in this country buy used cars as their primary form of personal transportation.<sup>25</sup> The used car market continues to expand over the new car market; in 1979, two of every three cars sold in the United States were used.<sup>26</sup> Consumers in that year spent \$66.7 billion, including the value of trade-ins, in purchasing a record 18.5 million used cars from all sources.<sup>27</sup> Dealers retailed

<sup>18</sup> The Commission believes that the revised Rule promulgated today raises no issues of law or fact which were not fully addressed in the record after adequate notice. The principal elements of the Rule—the warranty information and known defect disclosure requirements—have been under consideration since early in the proceeding. See 41 FR 1069 (1976); 41 FR 20896 (1976).

<sup>19</sup> Used Car Data, 1979 Hertz Corporation Poll, published in *Hertz News*, October 1, 1979, with additional data published on July 21, 1980 (hereinafter cited as 1979 Hertz Poll), July 21, 1980 at 1. These data combine an analysis of 10-year used car sales data with the results of a 1979 Hertz national mail poll of used car buyers, internal Hertz data, and published industry figures. These publicly-issued studies have not been considered or relied upon by the Commission in making its decision to promulgate this Trade Regulation Rule; rather, this information is presented for illustrative, background purposes. While the Commission has not, therefore, considered the evidentiary value of these reports, the Commission notes that data from these studies have been cited by a major industry association in a post-record comment. National Independent Automobile Dealers Association (NIADA), T-742 at 4, 9.

<sup>20</sup> For example, in 1979, 10.3 million new cars were sold compared to 18.5 million used cars. See 1979 Hertz Poll, Table IV.

<sup>21</sup> *Id.* 34 percent of used car buyers traded in an older car when they bought one used in 1979. The value of trade-ins amounted to some 36 percent of the total market sales figure. *Id.* at 2. Other industry tabulations include only "net" payments to dealers, excluding trade-in value, and would therefore be significantly lower than the Hertz estimate.

Continued

Many of the citations in this statement are to the Staff Report, which recounts and summarizes the record evidence.

<sup>18</sup> 44 FR 914 (1979). These post-record comments are filed in Category "S" of the record and are contained in volumes labeled 215-54-1-19.

<sup>19</sup> The participants were National Automobile Dealers Association; San Francisco Consumer Action and California Public Interest Research Group; National Independent Automobile Dealers Association; American Car Rental Association; Virginia Independent Automobile Dealers Association; Consumer Bankers Association;

Automobile Owners Action Council; National Consumer Law Center; and American Imported Automobile Dealers Association.

<sup>20</sup> The Commission also eliminated from further consideration the staff's proposals for disclosure of prior use and mileage of used cars.

<sup>21</sup> The Commission directed the staff (1) to delete the requirement that a dealer give an estimate of the cost to repair any system marked "Not OK"; (2) to add a requirement that dealers disclose all known defects (in addition to those discovered during the course of an inspection); (3) to eliminate a disclosure relating to vehicles that had been declared a "total loss" by insurers; and (4) to include in the text of the Rule a list of the unfair or deceptive practices in accordance with *Kotharine Gibbs School v. FTC*, 612 F.2d 658 (2d Cir. 1979).

<sup>22</sup> 45 FR 52750 (1980).

<sup>23</sup> The comment period was scheduled to close on October 7, 1980, but was extended to November 7, 1980, in response to requests from the National Automobile Dealers Association and the Center for Auto Safety. See 45 FR 66810 (1980). These comments are filed in Category "T" of the record and are contained in volumes labeled 215-54-1-20.



11.1 million of those cars for total revenues of over \$45 billion.<sup>28</sup>

1. **Used Cars Purchased.** The typical used car purchased in 1979 can generally be described as a \$3,600 intermediate-sized sedan slightly under 3 years old with 29,000 miles on the odometer.<sup>29</sup> Twenty-nine percent of all used cars bought were one year old or less, 34 percent were 2 years old, and 37 percent three or more years of age.<sup>30</sup> Average prices were \$6,300 for the latest models, \$5,000 for year-old cars, \$4,000 for 2-year old models, and \$2,900, \$2,300, \$1,800, \$1,500 and \$1,000 respectively for cars 3-7 years of age and older.<sup>31</sup> Average mileage of these cars at the time of purchase ranged from 9,900 miles for the newest models to 66,250 miles for the oldest.<sup>32</sup>

2. **Used Car Sellers.** Sales by dealers accounted for 60 percent of all used car sales in 1979. Some 21,000 franchised new car dealers who also sell used cars dominate the dealer share of the used car market and retailed about 7.8 million units, or 42 percent of all used cars sold in 1979. Their total revenues were \$32.6 billion, almost one-half the total amount paid by consumers for all used cars.<sup>33</sup> Cars sold at these dealerships for an average price of \$4,200 and had been driven an average of 21,200 miles at the time of purchase.<sup>34</sup>

Independent dealers selling only used cars usually retailed older, less expensive cars; in 1979, the average car sold by such dealers cost \$3,700 and had 32,800 miles on the odometer.<sup>35</sup> With unit sales of 3.3 million, their market share in 1979 was about 18 percent and total revenues were \$12.6 billion.<sup>36</sup> There

are some 36,000 independent used car dealers.<sup>37</sup>

Private sales to individuals at an average price of \$2,835 accounted for the remaining 40 percent of used car sales in 1979.<sup>38</sup> These cars had an average of 36,900 miles on the odometer.<sup>39</sup> For purposes of this data, this category includes direct sales by fleet operators, such as government agencies, public utility companies, and lease-rental companies that periodically retail their vehicle fleets. Retail fleet operator sales to individuals comprised less than 2 percent of all used cars sold in 1979, although this category of used car seller is increasing.<sup>40</sup>

Commissioned sales agents are uniformly used in the industry by all but the smallest dealerships.<sup>41</sup> There is a high degree of movement of commissioned sales agents from dealer to dealer within the industry.<sup>42</sup>

3. **Used Car Buyers.** Compared to new car buyers, used car purchasers are typically younger—36 as opposed to 45 years of age—and their family unit earns less.<sup>43</sup> It appears from the statistics cited earlier in this section that many would-be new car buyers are seeking personal transportation from the used car market because of the lower cost involved.<sup>44</sup> Twenty-eight percent of used car buyers in 1979 reported having professional or technical occupations and another 17 percent held managerial, official or proprietorship positions.<sup>45</sup> Some 15 percent of the used car buyers in 1979 who had previously purchased cars were in the used car market for the first time.<sup>46</sup> Sixty percent of used car buyers in that year financed an average

of 69 percent of the purchase price, a figure which parallels the 61 percent new car transactions that are financed.<sup>47</sup>

## II. Basis for a Rule

Our examination of the record in this proceeding convinces us that there is substantial evidence of deceptive acts and practices in connection with the sale of used cars. Consumers are frequently misled or deceived by affirmative misrepresentations and failures to disclose material facts concerning both the extent of warranty coverage offered by used car dealers and the mechanical condition of used cars. In the following section, we set forth a description of the used car industry and of the deceptive practices that the Commission seeks to address by the Trade Regulation Rule promulgated today.

A. **Deceptive Practices in the Industry.** The record in this proceeding provides substantial evidence of deceptive acts and practices by used car dealers. The principal abuses recorded relate to oral misrepresentations by dealers regarding: (1) warranty responsibilities for after-sale repairs and (2) mechanical condition at the time of sale. Such oral statements are often inconsistent with the warranty terms, or disclaimers thereof, provided in the written sales contract and with the dealer's actual knowledge of the car's mechanical condition at the time of sale. Consumer injury occurs because consumers make purchasing decisions based on dealer deception and not only fail to get the car they bargained for but face unexpected expensive repair bills.

1. **Warranty Practices— a. General Overview.** The record demonstrates the material significance to consumers of information concerning warranty coverage.<sup>48</sup> Nonetheless, many used car dealers mislead consumers into believing that they have broad post-purchase warranty coverage when in fact consumers receive limited or no warranty protection against repairs that may become necessary after sale.<sup>49</sup> Frequently, dealers and their sales agents not only fail to disclose conspicuously the limited nature of their repair responsibility, but also orally misrepresent the extent of warranty coverage.<sup>50</sup> In many cases, dealers make verbal promises to repair defects after sale which are contradicted by

The Hertz data also assume one transaction from driver to driver. For example, a car traded by a consumer to a dealer and subsequently resold to another private individual, even after several dealer-to-dealer title transfers, was counted as one transaction. The Hertz sales figures may therefore differ from other industry estimates which count the intermediate transfers as individual sales.

<sup>28</sup> *Id.* at Table III.

<sup>29</sup> *Id.* at 2. Only 8 percent of the cars were imports (compared to a market share for new imports in 1979 of 18%). *Id.*, October 1, 1979 at 3.

<sup>30</sup> *Id.*, July 21, 1980 at Table V. All dollar figures are rounded to the nearest \$100. Thirteen percent of the cars were 7 or more years old. *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.* All mileage figures are rounded to the nearest 100. Intermediate-aged cars had the following average mileages: 1 year—13,200; 2 years—20,000; 3 years—30,000; 4 years—42,300; 5 years—51,600; and 6 years—58,600. *Id.*

<sup>33</sup> *Id.* at Table III; Mitchell, National Automobile Dealers Association (NADA), Oral Presentation before the Commission, September 25, 1979, TR 5.

<sup>34</sup> 1979 Hertz Poll, July 21, 1980 at Table V.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.* at Tables III, V.

<sup>37</sup> Lemov, NIADA, Oral Presentation before the Commission, September 25, 1979, TR 84.

<sup>38</sup> 1979 Hertz Poll, 7/21/80 at Table V.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.* at 4.

<sup>41</sup> Vojtko, TR 4274; Bigham, TR 5274-77. Small dealerships are staffed solely by the owner.

<sup>42</sup> Warwick, TR 5363; Bigham, TR 5274-77. One sales agent who described these practices in detail had been employed at different times by 20 franchised dealerships since 1963. Warwick, TR 5380.

<sup>43</sup> Family income averages \$20,000 a year for used car buyers and \$29,500 for new car buyers. 1979 Hertz Poll, 10/1/79, at 5.

<sup>44</sup> The Hertz data calculates that ownership and operating costs for the typical used car purchased in 1979, based on buyer expectations of 3 years and 30,000 miles of driving, are less than 24 cents a mile. The same costs for the average new 1979 model—a slightly smaller, mid-range unit—are 36.5 cents a mile, about one-third more. *Id.*, 7/21/80, at 2. Used, standard-sized models can be less expensive to run than new, smaller cars because of the discounts available on them in today's market compared to the premium prices commanded by the smaller cars.

<sup>45</sup> *Id.*, 10/1/79, at 5. Another 33 percent were laborers, craftsmen or foremen; the remaining buyers reported their occupations as retired (5%), unemployed (4%), student (3%) or other (10%). *Id.*

<sup>46</sup> *Id.* at 2.

<sup>47</sup> *Id.* at 7. The Hertz Poll new car figure is based on a *Newsweek* survey, Federal Reserve System figures for 1977 show some 75 percent of new cars financed in that year.

<sup>48</sup> Staff Report at 291-305.

<sup>49</sup> See II.A.1.c (1) and (2) *infra*.

<sup>50</sup> *Id.*



final written contract terms that disclaim all repair responsibility.<sup>51</sup>

Abuses are particularly prominent in that portion of the used car market in which cars are sold with no warranty coverage or "as is." The record demonstrates that, in many "as is" sales, dealers regularly make oral representations of vehicle quality (condition) and warranty coverage (promises to repair after sale) which are not memorialized in the contract. Instead, those oral representations are contradicted by "as is" contract terms which enable dealers to legally renege on their oral promises.<sup>52</sup> Consumers, relying on these oral misrepresentations, often believe that they will receive more protection with respect to post-sale repairs than is actually provided. In fact, however, there is widespread failure by dealers to honor oral promises relied on by consumers in making purchasing decisions in both "as is" and warranted sales.<sup>53</sup> When dealers fail to honor their oral promises, used car buyers often face expensive and unexpected repair bills.<sup>54</sup> Such unanticipated repair bills occasionally result in loan default and vehicle repossession.<sup>55</sup>

b. *"As Is" Sales and Warranty Terms in the Marketplace.* A significant proportion of used cars are sold by dealers on an "as is" basis, with no written or implied warranty.<sup>56</sup> Two studies involving used car purchasers indicate that about half of all buyers purchased used cars with no warranty.<sup>57</sup>

<sup>51</sup> *Id.*

<sup>52</sup> Staff Report at 295-296, n. 96.

<sup>53</sup> *Id.* at 296-297, n. 96.

<sup>54</sup> In some extreme cases, these repair bills approach 20-50 percent of the car's selling price. *Id.* at 58-61, 299, n. 101.

<sup>55</sup> *Id.* at 300, n. 102. A legal aid attorney in Los Angeles testified that about half of the vehicle repossession cases with which he is familiar originated from dealers' failure to honor oral promises to repair in "as is" sales. Rouda, TR 3446.

<sup>56</sup> Used car dealers confirm the widespread use of "as is" sales. Many dealers reported selling cars exclusively on an "as is" basis or noted that a high percentage of used cars are retailed "as is." Some dealers testified that they rely on "as is" sales only for a small portion of cars sold and offer written warranties on newer models. Although most "as is" sales do involve older, generally cheaper cars, this is not necessarily so. A number of dealers suggest that any used car offered for sale may be sold "as is." Staff Report at 249-252, nn. 2-9.

<sup>57</sup> In the Survey Research Laboratory (hereinafter cited as SRL) study, *Beliefs and Experiences of Dissatisfied Purchasers of Used Motor Vehicles*, 52 percent of the responding buyers across the country reported receiving no warranty with their used car. HX 160(A), Appendix C, Question 21. In the study *An Investigation of the Retail Used Motor Vehicle Market: An Evaluation of Disclosure and Regulation* (hereinafter cited as Wisconsin Study), 43 to 55 percent of the sampled purchasers in Wisconsin, Iowa and Minnesota bought their used cars "as is." HX 164(A), Table IV-20 at 30. Approximately half of the individual consumers who presented testimony in this proceeding

"As is" sales have a significant legal impact on consumers. In most states that have adopted the Uniform Commercial Code (UCC), the contract terms "as is" or "with all faults" exclude the implied warranties of merchantability and fitness for a particular purpose that normally would arise in a used car transaction under state law.<sup>58</sup> As a result, dealers selling cars "as is" are not legally responsible, as a rule, for defects that exist at the time of sale or repairs that become necessary after the sale is completed.<sup>59</sup> The legal effect of "as is" sales assumes particular importance for consumers in used car transactions because of the parol evidence rule enacted in most states as part of the Uniform Commercial Code. Under the parol evidence rule, evidence of any oral agreement that contradicts the final written contract terms is excluded.<sup>60</sup> Thus, in the event of a dispute over the extent of the dealer's responsibility for post-purchase repairs, consumers generally cannot use evidence of oral promises to repair in order to establish dealer liability.

Because of the severe legal consequences of an "as is" sale, consumers who purchase "as is" and experience post-purchase repair problems constitute a large percentage of used car complainants. State and local law enforcement and consumer agency officials report that "as is" sales represent a substantial portion of their used car cases and complaints; and legal aid attorneys, representing low-income consumers, agree that most of the used car problems affecting their clients occur in "as is" sales transactions.<sup>61</sup>

The terms of written warranties given to used car buyers vary markedly in

complained of dealer practices involving "as is" sales. Staff Report at 252, n. 10.

<sup>58</sup> Uniform Commercial Code § 2-316(3)(a) states: (a) unless the circumstances indicate otherwise, all implied warranties are excluded by expressions like "as is", "with all faults" or other language which in common understanding calls the buyer's attention to the exclusion of warranties and makes plain that there is no implied warranty.

<sup>59</sup> See generally Staff Report at 483-498 for a full discussion of state laws relating to "as is" sales.

<sup>60</sup> Section 2-202 of the UCC states: Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a writing intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented—(a) by course of dealing or usage of trade (Section 1-205) or by course of performance (Section 2-208); and (b) by evidence of consistent additional terms unless the court finds the writing to have been intended also as a complete and exclusive statement of the terms of the agreement.

<sup>61</sup> Staff Report at 249-251.

duration, coverage and allocation of costs between buyer and seller.<sup>62</sup> Warranty duration generally ranges from 30 days or 1,000 miles to 12 months or 12,000 miles, with the longer duration terms typically given for late model cars.<sup>63</sup> When warranties are given, most extend for a period of 30 days, regardless of vehicle age.<sup>64</sup>

The warranty coverage of vehicle components tends to vary even more widely than does warranty duration. Coverage rarely extends to all vehicle systems and components. Rather, protection typically extends to the "drive train" (engine, transmission and rear axle), or to "safety" components in those instances where dealers are required to warrant their cars under state safety inspection laws.<sup>65</sup>

The warranty term that varies most widely related to allocation of cost—the respective shares of total costs to be paid by the dealer and buyer for repairs that become necessary after sale. Some dealers give warranties covering 100 percent of the repair costs for the more expensive, late model cars.<sup>66</sup> However, "split-cost" coverage is far more representative of the written warranties associated with used car sales.<sup>67</sup> "Split-cost" involves shared responsibility by the dealer and buyer, each paying a stated percentage of total repair costs. Although the percentage split figures vary considerably,<sup>68</sup> many dealers indicate that a 30-day warranty with an even "50-50" cost allocation is most common.<sup>69</sup>

Percentage discounts, substantively the same as "split-cost" warranties, are

<sup>62</sup> See generally Staff Report at 253-260. In the Wisconsin Study, for example, 75-82 percent of Wisconsin dealers surveyed varied their warranties according to vehicle age, condition and price. HX 164(A) at 44 and Table V-4, Question 4.

<sup>63</sup> Staff Report at 254, nn. 14-15.

<sup>64</sup> *Id.* at 255, n. 16.

<sup>65</sup> *Id.* at 255-256, nn. 17-18. A representative of the Center for Auto Safety, who surveyed dealer practices in Cleveland, Dallas and Washington, D.C., by means of "test shoppers", observed that the "drive train" limitation was the most common restriction on 30-day warranties offered by the dealers surveyed. Wilka, TR 6458-59. However, coverage even under this type of restricted warranty may vary. One state official noted that the most popular warranty observed in Connecticut was a "drive train" warranty that covered only the "rear end" (i.e., differential and rear axle) and transmission. Simmons, TR 540.

<sup>66</sup> Staff Report at 257, n. 21.

<sup>67</sup> *Id.* at 257-260, nn. 22-29.

<sup>68</sup> *Id.* at 259-60, nn. 27-29.

<sup>69</sup> *Id.* at 258, nn. 23-24. The 30-day, 50/50 warranty was offered 25-40 percent of the time by dealers surveyed in the Wisconsin Study, for example—more than any other. HX 164(A) at Table V-4. Thirty-five percent of all dealers surveyed in Dallas, Cleveland and Washington, D.C., by the Center for Auto Safety offered test shoppers a 30-day, 50/50 warranty. Wilka, TR 6458.



also common cost allocation terms used by dealers in warranties. Generally, discount terms give the buyer a 10-25 percent reduction on the cost of parts and labor for repairs made by the dealer after sale.<sup>70</sup> Some dealers restrict the discount to parts only or to labor only.<sup>71</sup>

A number of dealers also report selling service contracts with their used cars. The terms of service contracts sold to buyers vary almost as widely as those of written warranties<sup>72</sup> and range in cost from under \$50 to over \$200.<sup>73</sup> Unlike warranties, service contracts are priced separately and are not included in the price of the vehicle.<sup>74</sup>

In sum, the record evidence reveals a broad range of warranty terms offered to used car buyers to protect against repair expenses that become necessary after sale. In addition, most written warranties given by dealers cover only a portion of repair expenses that may become necessary after sale.

#### c. Dealer Deception—(1) "As Is" Sales.

By far the most common abuse evidenced in the record with respect to warranties is the frequent dealer practice of making oral promises to repair defects arising after sale which contradict the written "as is" clause in the sales contract.<sup>75</sup> Dealers often couple these promises with oral representations about mechanical condition.<sup>76</sup> Thus, the record is replete with examples of "as is" sales in which representations were made to the effect that a particular vehicle was in "good condition" and assurances were given to the consumer that "if anything goes wrong, just bring it in and we'll take care of it."<sup>77</sup> Representations as to mechanical condition are rarely, if ever, incorporated into sales contracts.<sup>78</sup> They are, instead, almost always restricted to oral statements made during the bargaining process.<sup>79</sup>

As a result, used car buyers with little or no mechanical condition information<sup>80</sup> about particular vehicles have been assured by salespersons of the quality of the vehicle they are buying. They often purchase "as is" and, by direct misrepresentation or inference, are led to believe that the seller will

correct defects discovered after sale. Later, when defects are discovered and the buyer returns to the seller seeking repairs, he/she learns not only that the assertions about mechanical condition are untrue, but also that his/her sales contract fails to hold the seller responsible.<sup>81</sup> Thus, consumers purchasing "as is" but relying on contradictory oral promises are stripped of the protection afforded by either express<sup>82</sup> or implied warranties and, at the same time, have no legal recourse against the dealer because prior or contemporaneous oral statements which contradict final written contract terms are generally not legally binding.<sup>83</sup> Evidence in the record demonstrates that this predicament occurs frequently in the used car market<sup>84</sup> and is often cited as the chief problem in used car sales.<sup>85</sup>

Several dealer practices lead to the situation described above. First, dealers commonly fail to provide adequate written definitions as to the real meaning of an "as is" sale.<sup>86</sup> Rather, when explanations are forthcoming, they typically take the form of oral statements relating a variety of plausible excuses as to why the vehicle can only be sold "as is." Thus, consumers are told that the vehicle's age, or mileage, or low selling price demand that the sale be on an "as is" basis.<sup>87</sup>

Many used car dealers also fail to provide clear, conspicuous and timely written disclosure of the meaning of "as

is." Many "as is" disclosures are couched in complex, legalistic terms which neither explain the meaning of "as is" in understandable language nor inform the buyer that the dealer is not responsible for any repair after the sale is final.<sup>88</sup> Other "as is" disclosures oversimplify the true meaning of an "as is" sale by merely stating that the vehicle is sold "As Is," or "As Is—With All Faults."<sup>89</sup>

Some dealers also do not conspicuously disclose the "as is" clauses in the sales contract nor present the clause to the consumer in a timely manner. Instead, disclosures generally are not made until the consumer is already committed to the purchase and is faced with a series of documents to sign in rapid order and in a pressured environment.<sup>90</sup>

In light of these dealer practices, it is not surprising that a significant portion of used car buyers do not understand

<sup>70</sup> McCalip, dealer, TR 6918. See also Brown, dealer organization, HX 80 at 10 (dealers' form disclaiming warranties and verbal sales representations which is signed by the buyer at the time of sale). Cf. Rothschild, legal aid, TR 3190 (unclear warranty disclaimers are among primary problems); Alpert, legal aid, J-17 at 3 ("as is" disclosures are technical). Whether the language suffices as an effective disclaimer under state law is, of course, a separate issue. Indeed, Comment 4 to UCC § 2-313, governing express warranties, makes it clear that a seller cannot negate responsibility for express warranties simply by inserting a clause in the contract "generally disclaiming all warranties, 'express or implied.'" Such a clause, the comment states, "cannot be given liberal effect under § 2-316" (Exclusion or Modification of Warranties).

<sup>71</sup> Stine, state official, TR 4361 (occasionally sees a big "as is" stamped at the top of used car contracts with a 50/50 guarantee on brakes and shocks); Friedman, state official, TR 4472-73 (typical disclosure in Colorado is "this car is being sold on an 'as is' basis"); Goldinger, local official, TR 3554 (current "as is" language in all contracts fails to inform consumers of the limitations of their rights); Fan, legal aid, TR 4130 (dealers use standard form contract with large "as is"); Sugarman, dealer, TR 4089 (consumer signs slip of paper stating that the sale is "as is").

<sup>72</sup> Although some dealers profess diligence in disclosing the "as is" nature of the sale, the record demonstrates that when this is so, it is typically after the consumer has decided to buy, or the disclosure is vague, inconspicuous or incomplete. The most common "as is" disclosure practice evidenced in the record is that potential buyers are not introduced to the "as is" clause, if it is recognized at all, until the sale is about to be finalized. Typically, the buyer is ushered into the "closing room," (a term used throughout the hearings to denote the room or place, typically within the dealer's place of business, where the potential buyer is taken to discuss the details of the transaction) where he or she is handed a number of documents to simultaneously read, digest and sign and where the final selling price and financing terms, if any, are determined. Consumers, already emotionally committed to the purchase and anxious to close the deal, often fail to read each document thoroughly. Unless their attention is specifically directed to it, buyers do not see or fully comprehend the "as is" clause disclaiming all warranties. Staff Report at 285-288.

<sup>73</sup> *Id.* at 274-280.

<sup>74</sup> The "as is" clause also contradicts express, oral representations concerning mechanical condition made during the bargaining process. Thus, it serves to negate express oral warranties as well as implied warranties.

<sup>75</sup> See I.L.A. 1.b. *supra*.

<sup>76</sup> Staff Report at 295-300.

<sup>77</sup> See, e.g., Wolkowitz, Legal Aid, HX 150 at 2; Epstein, Legal Aid, HX 166 at 2.

<sup>78</sup> For example, dealers are all too often silent about the meaning of "as is". When comments are made, they are usually in response to consumers' questions. When consumers who already thought they knew the meaning of "as is" were queried as to the basis for their "as is" knowledge, 82 percent said they already had this knowledge. Only 18 percent reported that the salesperson explained the meaning of "as is". National Analysts Inc., *Report on a Survey of Buyers of Used Cars* (hereinafter cited as National Analysts Study), HX 162(A), Table 19 at 21.

<sup>79</sup> See, e.g., Baker, consumer, TR 466-67, 472 (salesman said they could not warrant a car selling as cheap as \$1,400, but that consumer would not run into any problems); McCalip, dealer, TR 6918-19 (dealer tells the consumer the car is now "as is", "that's why you're getting a lower price"); Warwick, salesman, TR 5378 (salesman will "talk his way around" the "as is" by saying that the car would cost more with a warranty); Brauchli, local official, TR 3807-08, 3830-31 (if dealer does explain, he will offer the buyer a "special deal", representing that "as is" is merely to protect the dealership, "but for you we'll stand behind the car").

<sup>70</sup> Staff Report at 259, n. 25.

<sup>71</sup> *Id.* at 259, n. 26.

<sup>72</sup> *Id.* at 260-261, n. 30.

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> Presiding Officer's Report at 46-47, 125; Staff Report at 275-277, 286-287.

<sup>76</sup> Presiding Officer's Report at 125; Staff Report at 275-276.

<sup>77</sup> Staff Report at 276-277, n. 65.

<sup>78</sup> Presiding Officer's Report at 47.

<sup>79</sup> *Id.*

<sup>80</sup> Staff Report at 83-84, n. 75.



the legal significance of the phrase "as is."<sup>91</sup> In three studies of used car buyers, from 25 percent to as many as 59 percent of the persons surveyed failed to identify a correct description of an "as is" sale or mistakenly believed that the seller, or the seller and buyer jointly, would be legally responsible for repairs after sale.<sup>92</sup> These buyers were responding to hypothetical questions posed after sale. However, the widespread lack of basic consumer understanding about "as is" sales or implied warranties is corroborated in the record by legal aid attorneys, state and local officials, consumers, and consumer groups across the country, and even by some dealers.<sup>93</sup> Many of these same witnesses reported that used car buyers often believe, erroneously, that "as is" means "as it appears to be", referring to visible or known defects (like body rust or dents) as opposed to latent defects, or "as equipped", referring to vehicle accessories already installed.<sup>94</sup> Indeed, the evidence demonstrates that a great many consumers who buy "as is" erroneously believe that their cars are warranted in some manner—that the dealer will fix problems arising after sale—despite the written "as is" contract clause.<sup>95</sup>

It has been suggested that consumers' mistaken beliefs about warranty coverage in "as is" sales may be caused in part by their lack of experience in purchasing cars and by their general marketplace belief that sellers stand behind their products.<sup>96</sup> While this may provide a partial explanation, the record taken as a whole supports the finding that consumers' misunderstandings about their after-sale repair responsibility in "as is" sales stem primarily from deceptive practices by

used car dealers and their sales agents.<sup>97</sup>

(2) *Written Warranty Coverage.* Despite the crucial role that warranty information could play in used car purchasing decisions, many used car buyers who receive written warranties are unaware of their actual liability for repairs that may become necessary after sale.<sup>98</sup> This consumer ignorance is the result of several deceptive practices by dealers.<sup>99</sup> Many used car dealers obscure the need for and extent of warranty protection through affirmative oral misrepresentations.<sup>100</sup> Nondisclosure or inconspicuous disclosure of certain material facts about warranty coverage frequently occurs.<sup>101</sup> The record demonstrates that when disclosure of warranty information does occur, it generally comes too late in the transaction to influence the purchasing decision.<sup>102</sup> As a result, used car buyers at the time of sale often mistakenly assume that they are protected against repair expenses after sale.<sup>103</sup>

The record further establishes that certain dealer practices lead to consumer misunderstandings regarding written warranty terms. Discrepancies between oral representations of the warranty coverage made while the consumer is first considering purchase and actual written warranty terms are commonplace.<sup>104</sup> Typically, purchasers who receive written warranties believe that more is warranted than is the case.<sup>105</sup> Oral representations of a "full 100%/30-day" warranty, for example, often turn out in fact to be limited "drive train" warranties (engine, transmission and rear axle) or simple percentage discounts on labor or parts.<sup>106</sup> For example, one consumer stated that an oral 6-month unconditional warranty was contradicted by the written 30-day warranty received.<sup>107</sup> Another consumer stated that an oral 90-day warranty promise was in fact a 30-day warranty.<sup>108</sup> One consumer stated that oral representations made during the

sales pitch differed from the actual terms of the \$185 service contract received.<sup>109</sup> In one study, verbal assurances given by dealers differed from the actual written warranties in 34 percent of the situations where "test shoppers" were able to see a written warranty.<sup>110</sup> Consumers typically rely on these inaccurate verbal warranty descriptions in making purchasing decisions.<sup>111</sup>

As in the case of "as is" disclosure, dealers frequently fail to provide clear, conspicuous and timely disclosure of warranty terms. In many cases involving written warranties, dealers fail to disclose actual limitations and restrictions on coverage when orally describing warranty coverage, so that consumers are left confused about the extent of warranty coverage on the car. A used car salesman testified, for example, that dealers he knew of or worked for in California gave buyers "50/50 warranties" without explaining what that coverage actually meant.<sup>112</sup> In another study, warranty documents received by a large percentage of survey respondents failed to describe the items that the dealer would repair; the dealer's share of repair cost responsibility was also frequently not disclosed.<sup>113</sup> One legal aid attorney stated that most of his clients did not understand the meaning of a split-cost, 50/50 warranty.<sup>114</sup> Several consumers stated that, at the time of purchase, they were not aware of the terms of the warranty.<sup>115</sup>

Frequently dealers obscure the need for full warranty information disclosure by answering consumers' initial inquiries about warranty coverage with such generalities as "good warranty" or "full guarantee", with no further explanation of terms.<sup>116</sup>

Dealers also often fail to give the buyer copies of the written warranty until after the sales contract has been signed. A consumer group representative testified that, in a study of dealer practices conducted in Cleveland, Dallas and Washington, D.C., detailed warranty information was given to the "test shoppers" (posing as

<sup>91</sup> Presiding Officer's Report at 124; see I.L.A.1.b. *supra*. Some dealers believe that consumers do understand the meaning of "as is" but conveniently forget when problems arise. See, e.g., Corkhill, dealer organization, C-23 at 12. However, other industry members recognize that a most frequently expressed complaint on the rulemaking record relates to lack of understanding on the part of consumers of what an "as is" sale means and that a contributing factor to that lack of understanding is dealer misrepresentation. NIADA, S-739 at 82-83.

<sup>92</sup> Wisconsin Study, HX 164(A) at 13; National Analysts Study, HX 162(A), Table 18, at 21; SRL Study, HX 160(A), Appendix C, Question 14 and accompanying table.

<sup>93</sup> Staff Report at 263-264, n. 37; 290, n. 90.

<sup>94</sup> *Id.* at 265, nn. 38-40.

<sup>95</sup> *Id.* at 279-280, n. 69. In addition, 28 percent of the responding used car buyers in the SRL Study who learned after sale that they had actually bought "as is" mistakenly believed, or were not sure, at the time of sale that their cars were warranted. HX 160(A), Table 12 and accompanying text at 23-24, Appendix C, Question 20.

<sup>96</sup> *Id.* at 280, n. 69.

<sup>97</sup> Presiding Officer's Report at 128. See nn. 78-83 and accompanying text, *supra*.

<sup>98</sup> See generally Staff Report at 261-265, 278-281, and 288-290.

<sup>99</sup> *Id.* at 280-290.

<sup>100</sup> *Id.* at 286-287.

<sup>101</sup> *Id.* at 281-286.

<sup>102</sup> *Id.* at 285-286.

<sup>103</sup> *Id.* at 280-289.

<sup>104</sup> *Id.* at 286, n. 84.

<sup>105</sup> *Id.* at 288, n. 88. In the Wisconsin Study, for example, a much greater proportion of Wisconsin consumers reported receiving 30-day, full coverage warranties than Wisconsin dealers reported giving them. *Id.* at 289, Table 1.

<sup>106</sup> *Id.* at 287, n. 85.

<sup>107</sup> Clifford, L-1134 at 1.

<sup>108</sup> Cash, L-1016 at 1.

<sup>109</sup> Kersey, TR 5836-40.

<sup>110</sup> California Public Interest Research Group, A CALPIRG Study: Practices in the Used Motor Vehicle Industry (hereinafter cited as CALPIRG Study), HX 82 at 17.

<sup>111</sup> Staff Report at 275-277, n. 66; 286-287, nn. 84-86.

<sup>112</sup> Bigham, TR 5269.

<sup>113</sup> SRL Study, HX 160(A), Appendix C, Questions 23A, 23B. See also Staff Report at 283, n. 75; 285-286, nn. 79-83.

<sup>114</sup> Berry, TR 132-133.

<sup>115</sup> See, e.g., Morrison, L-1068 at 2; Kersey, TR 5836; Carr I-80 at 1; Holliday, I-164 at 1.

<sup>116</sup> Staff Report at 285, n. 80.



consumers) only after persistent questioning.<sup>117</sup> In fact, potential buyers are usually not introduced to written warranty disclosures until after they have decided to buy and the sale is about to be finalized.<sup>118</sup> As the transaction is concluded in the pressured atmosphere of the dealer's "closing room",<sup>119</sup> it is not surprising that consumers often fail to see or fully comprehend specific warranty terms.<sup>120</sup> The record establishes that copies of written warranties are rarely received by consumers before they enter the closing room.<sup>121</sup> At times the document is not provided until after the buyer signs the sales agreement.<sup>122</sup> In some instances, warranty documents are not provided to consumers at all.<sup>123</sup>

As a result of these dealer practices at the time of sale, a substantial number of used car buyers are unaware of the actual terms of the written warranties they receive.<sup>124</sup>

(d) Summary.

In sum, the record demonstrates warranty coverage information is material to the used car transaction and that a substantial number of used car buyers are unaware of the true extent of warranty coverage because of deceptive dealer practices. Some used car dealers fail to provide clear and conspicuous explanations of the extent of their responsibility for repairs needed either at or after the time of sale. Other dealers often minimize the need for warranty protection by means of oral misrepresentations of vehicle condition and unenforceable oral promises to repair. As a result, many consumers rarely have a complete picture of the true cost of a used car purchase and often have a false impression of the dealer's actual after-sale repair responsibilities. Such misrepresentations and nondisclosures cause consumers to expend substantial sums of money for post-sale repairs which they are led to believe will not arise or will be paid for by the dealer.<sup>125</sup>

Thus, dealer warranty disclosure practices, including oral misrepresentations regarding warranty

coverage, significantly compound the consumer's risk of liability for the many undisclosed defects existing in used cars at the time of sale. Dealer practices resulting from defects in the mechanical condition of used cars are discussed below.

2. Mechanical Condition Practices—*a. Materiality of Mechanical Condition Information.* The utility of a vehicle as a means of transportation is directly affected by mechanical condition. Therefore, it is not surprising that consumer research indicates a consistent concern about mechanical condition.<sup>126</sup> In fact, mechanical condition at the time of sale is reported by consumers as the most important factor in reaching a purchasing decision.<sup>127</sup> Consumers who are aware of defects prior to purchase are able to use that information in pricing and selecting vehicles, as well as in budgeting for repair expenses. For example, record surveys indicate that consumers who had potential used car purchases inspected prior to purchase made significant use of inspection results in subsequent bargaining for repairs and price reductions or in making purchasing decisions.<sup>128</sup>

Defect information is also important because repairs resulting from hidden defects are costly to consumers. The rulemaking record demonstrates this fact. The Northern California Auto Club's diagnostic records showed 1,000 defects in 160 vehicles taken from dealers' lots to the diagnostic center by consumers considering purchase. The average estimated cost per vehicle for the repair of defects present was \$162.89.<sup>129</sup> The Missouri Auto Club records showed an estimated average repair cost of \$235.64 per car with 312 defects present in the 56 vehicles it surveyed.<sup>130</sup> In the National Analysts Study, consumers reported costs for defects repaired and estimated costs for defects which surfaced but remained unrepaired.<sup>131</sup> Actual repair expense ranged from a few dollars to \$1500, with the average at \$109. The average estimated cost for repairs not completed was \$98. The Survey Research Laboratory Report also computed actual

and estimated costs of repair.<sup>132</sup> Because this study received data only from complaining respondents, actual and estimated repair costs were significantly higher on a per vehicle basis. Estimated performed repair costs averaged about \$350 per vehicle. In addition, respondents faced future repair costs (repairs yet to be performed) which were estimated at approximately \$275 per car.

The great bulk of repair cost is borne by the purchaser.<sup>133</sup> Moreover, out-of-pocket costs caused by defects often go beyond the cost of repairs. Purchasers of defective vehicles can lose their only form of transportation, a loss which may lead to other dislocations, including missed work and loss of employment.<sup>134</sup> Other costs may be incurred when safety-related defects cause or contribute to accidents which damage property and cause personal injury or death.<sup>135</sup> The impact on the poor from the purchase of a defective used vehicle may be particularly severe, since an unexpected repair bill may seriously disrupt an already strained budget.<sup>136</sup>

Therefore, the Commission finds that mechanical condition information is material to the used car transaction. Dealer misrepresentations regarding mechanical condition and failures to disclose known defect information are therefore deceptive acts and practices. Record evidence regarding such deceptive acts and practices is set forth below.

*b. Deception Concerning the Mechanical Condition of Used Cars.* The record contains significant evidence demonstrating oral misrepresentations by used car dealers of material facts concerning the mechanical condition of vehicles offered for sale. These deceptions include failures to disclose known defects, oral misrepresentations of sound mechanical condition and unsubstantiated claims about the car's mechanical condition.

One record study presented survey evidence demonstrating that dealers fail to disclose known defects. The California Public Interest Research Group (CALPIRG) undertook a survey which tested for the degree of known mechanical defect disclosure by dealers to consumers. The survey used trained

<sup>117</sup> Wilka, TR 6457.

<sup>118</sup> SRL Study, HX 160(A), Appendix C, Question 22; Staff Report at 286, n. 42; 282, n. 72.

<sup>119</sup> See n. 90 *supra*. See also Staff Report at 282, n. 73; 538-539.

<sup>120</sup> *Id.* at 288, n. 47; 283, n. 74.

<sup>121</sup> *Id.* at 285, n. 82.

<sup>122</sup> *Id.* at 286, n. 83. Sixteen percent of the used car buyers responding in the SRL Study reported receiving the warranty sometime after signing the contract. SRL Study, HX 160(A) at Appendix C, Question 22.

<sup>123</sup> Staff Report at 284-285, n. 79.

<sup>124</sup> *Id.* at 281, n. 71.

<sup>125</sup> Presiding Officer's Report, "Findings on Issue 6," at 128.

<sup>126</sup> National Analysts Study, HX 162(A) at 8-9; Wisconsin Study, HX 164(A) at 16-17.

<sup>127</sup> Wisconsin Study, HX 164(A) at 16-17 and Table IV-1.

<sup>128</sup> Northern California Auto Club, HX 116(A) at 5-7; Missouri Auto Club, HX 158(A) at 5-7; Staff Report at 68, n. 54. See also Wisconsin Study, HX 164(A) at Tables IV-16, IV-17.

<sup>129</sup> HX 116(A) at 3-5; TR 4906-07.

<sup>130</sup> HX 158(A) at 4-5; TR 6828-29.

<sup>131</sup> HX 162(A) at 34-36. Respondents reporting defects (136 out of 400) were asked to provide actual and projected repair costs.

<sup>132</sup> SRL Study, HX 160(A) at 12.

<sup>133</sup> Seattle Regional Office Study, B-1 at 31; National Analysts Study, HX 162(A) at 34; Wisconsin Study, HX 164(A) at Table IV-19. See also Baer, consumer organization, TR 3665; Baron, legal aid, TR 3911; Nowicki, state official, TR 2667-69; Newcomb, legal aid, J-74 at 1.

<sup>134</sup> Staff Report at 64, n. 49.

<sup>135</sup> *Id.* at n. 50.

<sup>136</sup> *Id.* at 64-65.



test shoppers who participated in actual sales transactions up to the point of determining what disclosures were made. After a test car was taken from the dealer's lot to a diagnostic center for inspection, the test shopper returned the car with a copy of the diagnostic report and discussed the report with the salesperson. The test shoppers then broke off negotiations. A second test shopper returned on a follow-up visit to determine whether the defect results of the diagnosis were being disclosed to the new prospective buyers. CALPIRG reports that, in 75 of the 101 completed tests, the follow-up purchaser did not receive defect information that had been provided to the dealer.<sup>137</sup> In 47 of these 75 cases of non-disclosure, the second test shopper dealt with the same salesman who had been given the diagnostic results by the first test shopper.<sup>138</sup>

In addition to the CALPIRG Study, the record is replete with testimony and documentary evidence citing dealer failure to disclose known defects.<sup>139</sup> The failure to disclose known defects includes a range of practices from purposeful disguising of defects in order to insure consumer ignorance<sup>140</sup> to situations, similar to that revealed by the CALPIRG study, wherein dealers simply do not inform consumers of the existence of defects.<sup>141</sup> In addition, some dealers believe that other dealers fail to disclose known defects.<sup>142</sup>

Closely linked to the failure to disclose known defects is the dealer practice of orally representing a car's mechanical condition as sound when such is not the case.<sup>143</sup> Record testimony

and documentary evidence regarding such misrepresentations are supported by data reported in several studies. In one study, complainants reported that sales agents commonly made general statements about the overall quality of the car. These statements were coded as very favorable in 34 percent of the cases, favorable in 56 percent, and neutral in the remaining 10 percent. Only 2 of over 800 respondents reported that the salesman made a negative comment.<sup>144</sup> Complainants were also asked if any specific representations were made about different vehicle components, and responses to this question were cross-tabulated against reported defects. The study found that where a specific component had been represented as being in good condition, the complainant was more likely to have had a problem with that component than if no specific positive comment had been made.<sup>145</sup> This finding suggests that defects have been hidden behind contradictory oral statements.

In the National Analysts Study, consumers reported that dealers discussed mechanical condition in about three-quarters of the cases and nearly always described it as good or very good.<sup>146</sup> These descriptions were later thought to be inaccurate 13 percent of the time.<sup>147</sup> More than half of the National Analysts Study respondents had been assured by the salesperson that their vehicle had been inspected for defects.<sup>148</sup> However, defects were disclosed in only 15 percent of the purchases.<sup>149</sup> The low rate of defect disclosure did not comport with the number of respondents (34 percent) who discovered defects after purchase.<sup>150</sup> The survey does not state whether, in the 15 percent of cases where disclosure did occur, the salesperson made full disclosures, since many respondents' cars suffered multiple defects.<sup>151</sup>

The National Analysts Study also correlated defect discovery data with disclosure practices data. The correlation revealed that consumers encountered greater post-sale defect problems when the salesperson remained silent with regard to defects

than when he/she did disclose defects.<sup>152</sup>

The Wisconsin Study provided additional data on the accuracy of dealer representations by comparing representations of mechanical condition made by dealers and private sellers. With regard to general mechanical condition, 17.1 percent of the consumers surveyed reported inaccurate information from the dealer compared to 9.4 percent who reported receiving inaccurate information from private sellers.<sup>153</sup>

The Missouri and Northern California Auto Club Studies provide additional data on the accuracy of sales representations. In these studies, respondents were asked whether, before the consumer's Auto Club inspection, the salesman had said anything about the condition of each system in which the Auto Club subsequently found a problem. Out of a total of 1,312 defects discovered by the inspection, only 87 were discussed in any manner by a salesman.<sup>154</sup> Of the 87 defective components discovered, 14 had been described by the salesman as being in good condition, 12 had been described as "probably alright" and 60 had been described as being in need of repair.<sup>155</sup>

The possibilities for deception in the used car market were described by Stanley Hoynitski, who testified on behalf of the Pennsylvania Automobile Dealers Association:

The used car business is a natural business for some unscrupulous businessmen . . . The nature of the motor vehicle, with its many thousands of internal parts, makes it highly susceptible to hidden defects, known or unknown to the seller. There is need to protect the consumer from these unscrupulous dealers who I acknowledge have crept into the [used car] business.<sup>156</sup>

One factor which facilitates a dealer's ability to make general representations about the quality of a used car without questioning by consumers is the general industry practice of appearance reconditioning known as "detailing."<sup>157</sup> After dealers obtain vehicles, they routinely engage in detailing, whereby the vehicle's interior, exterior, trunk and engine compartment are thoroughly cleaned in order to

<sup>137</sup> HX 82 at 11. The Commission notes the fact that these cars were not removed from the lot for purposes of determining if repairs had been made as a result of the original diagnostic report. While the results of this study should therefore be interpreted somewhat cautiously, the Commission believes that the short time lapse between notification of defects to the dealership and the second shopper's subsequent visit (and inquiries) permits an inference that at least some of these defects remained. See Rogoff, TR 3606; Staff Report at 34-36.

<sup>138</sup> *Id.*

<sup>139</sup> Staff Report at 103-105, n. 103.

<sup>140</sup> E.g., Bolentine, legal aid, J-39 at 2; Shaffer, mechanic, L-42 at 2; Goodwin, mechanic, TR 5886; Carpentier, dealer, TR 4459; Matysiak, state official, TR 7967-68.

<sup>141</sup> E.g., Carroll, consumer, TR 4201-02; Richardson, consumer organization, TR 6646-47, HX 155 (M) at 10-14; Brown, dealer organization, HX 80 at 9; Bigham, salesman, TR 5274-77.

<sup>142</sup> Staff Report at 103-105, n. 102; Wisconsin Study, HX 164(A) at Table V-6.

<sup>143</sup> Staff Report at 105, n. 103; HX 164(A) at Table V-6. One salesman testified that some dealers purposefully kept their sales staff ignorant about known defects to assure that salespeople would present the car for sale in a positive manner. Bigham, TR 5274-77. Some dealers, disputing that they engage in affirmative misconduct, state that

they have difficulty controlling oral representations made by sales people. See, e.g., Vojtko, TR 4274; Jones, C-56 at 3.

<sup>144</sup> SRL Study, HX 100(A) at 13.

<sup>145</sup> *Id.* at Table 7.

<sup>146</sup> HX 162(A) at Table 13 and 14.

<sup>147</sup> *Id.* at Table 15.

<sup>148</sup> *Id.* at Table 16.

<sup>149</sup> *Id.* at Table 17.

<sup>150</sup> *Id.* at 29. Of the survey's 400 respondents, 136 reported defects.

<sup>151</sup> *Id.* at Table 24.

<sup>152</sup> *Id.* at Table 25.

<sup>153</sup> HX 164(A) at Table IV-4.

<sup>154</sup> Northern California Auto Club, HX 116(A) at 4-5; Missouri Auto Club, HX 158(A) at 4-5.

<sup>155</sup> Since one respondent did not respond, there were a total of 86 responses rather than 87.

<sup>156</sup> Hoynitski, dealer organization, TR 8037.

<sup>157</sup> The Commission does not hold that "detailing" in and of itself is deceptive. However, as described herein, detailing can lend credence to oral misrepresentations.



enhance the car's salability.<sup>158</sup> Because many consumers rely on appearance cues in estimating a vehicle's mechanical condition, consumer injury can result when detailing obscures poor mechanical condition. That consumers think an attractive car is also sound mechanically is well-established in the record through testimony and documentary evidence.<sup>159</sup> Furthermore, survey data demonstrate that consumers judge a car's mechanical condition based on appearance cues and think that "clean" cars are in substantially better mechanical condition than cars described as being somewhat less attractive.<sup>160</sup> Another study shows that dealers identify "exterior condition" as the most important factor affecting a consumer's purchasing decision.<sup>161</sup> Therefore, it is not surprising that dealers invest heavily in detailing. One dealer association official stated that his membership spent an average of \$53 per car on appearance work.<sup>162</sup> Regardless of whether "detailing" is used solely to make the car more marketable or to disguise poor mechanical condition, the practice of detailing contributes to the persuasiveness of dealer representations that a car is in sound mechanical condition when such is not the case.

The entire record on dealer misrepresentations with regard to mechanical condition was summed up by the Presiding Officer in this proceeding as follows: "The clear and unavoidable conclusion established by the record is that many dealers do misrepresent or fail to disclose material facts relating to the mechanical condition of used cars offered for sale."

*c. Dealers Know That Defects Are Present in Used Cars at the Time of Sale.* The record demonstrates not only that many used cars have serious defects at the time of sale but also that dealers often know that these defects are present at the time of sale. This knowledge is obtained through inspections and evaluations that are made before the car is placed on the lot for sale.

The record shows that dealers routinely inspect vehicles for defects.<sup>164</sup> Those dealers who purchase cars at auctions can and do inspect for defects after purchase and have an option to rescind or renegotiate the sale if they

find sufficient problems with the vehicle.<sup>165</sup> Moreover, many auction facilities have rules requiring disclosure of known defects by the selling dealer so that the buying dealer obtains knowledge of defects at the auction.<sup>166</sup>

Even when not purchasing at auction, the industry practice is to appraise a vehicle before purchase. The appraiser typically takes the vehicle for a road test, visually inspects the body and mechanical condition of the car, and estimates the extent of repairs needed to make it saleable.<sup>167</sup> After dealers obtain vehicles, there is still further opportunity to inspect and evaluate in more detail, in order to determine what level of warranty coverage will be appropriate for the particular car.<sup>168</sup> If the inspection uncovers problems that are sufficiently great, a dealer may decide to wholesale the vehicle to another dealer, or to sell it "as is" rather than with a warranty.<sup>169</sup>

Employees who purchase used vehicles for the dealer, including at auctions, are widely conceded to be experts at identifying defects through road testing and visual examination.<sup>170</sup> Data presented in the Wisconsin Study showed that dealers were "very confident" in their ability to accurately assess the mechanical reliability of a used car by using only a test drive and visual inspection.<sup>171</sup> The record demonstrates that the considerable efforts dealers expend on inspections and their reliance on the results enable dealers to evaluate, appraise and price used cars offered for sale.<sup>172</sup>

The record also shows, however, that defects exist in cars sold by dealers.<sup>173</sup> Numerous legal aid attorneys stated that their clients' cars were debilitated by serious defects involving major mechanical and safety systems on the day of purchase or immediately thereafter.<sup>174</sup> Representatives of state and local consumer protection agencies as well as individual consumers reported similar experiences.<sup>175</sup>

Similarly, the SRL Study reported high rates of failure within one and four weeks of purchase with regard to the engine, "drive train", transmission and clutch, brakes, steering, front end, rear suspension, and tires.<sup>176</sup> Record studies also reported high levels of significant mechanical defects occurring within the first weeks of ownership and a decreasing frequency of defect discovery in subsequent periods. Yet, if defects did not exist at the time of sale, the expected rate of discovery should be constant over the periods covered by the studies.<sup>177</sup>

Dealers explain the presence of defects at the time of sale by arguing that used cars are highly complex products containing numerous component parts that can fail at any time.<sup>178</sup> However, the severity of the defects that appear, the great frequency with which they occur soon after sale, and the information obtained by dealers about the mechanical condition of cars sold prior to sale strongly support the conclusion that the bulk of the defects existed at the time of sale and were known by the dealers.<sup>179</sup>

Thus, the Commission finds that many dealers are aware of defects that exist at the time of sale and, despite this knowledge, engage in practices which deceive consumers and result in substantial consumer injury.

*d. Consumer Reliance on Dealer Representations and Injury.* The record clearly demonstrates the existence of a substantial information disparity between the buyer and seller in the used car market relating to the mechanical condition of used cars.<sup>180</sup> Used motor vehicle purchasers do not have at their

<sup>158</sup> HX 160(A) at 10.

<sup>159</sup> SRL Study, HX 160(A) at 10; Seattle Regional Office Study, B-1 at 27 and 28; National Analysts Study, HX 162(A) at 29. See also Staff Report at 46-52.

<sup>160</sup> Staff Report at 51, n. 17; 230, nn. 322-324.

<sup>161</sup> *Id.* at 51. NIADA states that there is no evidence in the record to support such an inference. S-739 at 72-73. The Commission concludes otherwise. The record demonstrates that most used car dealers obtain mechanical condition knowledge prior to offering the car for sale. Staff Report at 71-83. The record reveals that severe defects are discovered on the day of purchase or within two weeks of purchase. Notes 175-178, *supra*. Based on record studies which corroborate anecdotal testimony, the Commission is persuaded that defects which are severe and which surface immediately after sale are most likely present at the time of sale and known to the dealer. The record further indicates that these defects are not revealed to consumers. See, e.g., SRL Study, HX 160(A) at 13, Tables 6, 7. Thus, consumers are often surprised by the appearance of defects shortly after purchase and by the repair costs involved. See, e.g., National Analysts Study, HX 162(A) at Tables 28-31; Andreassen, SRL Study, TR 6948.

<sup>162</sup> Presiding Officer's Report at 90-92; Staff Report at 83-87.

<sup>164</sup> Staff Report at 71, n. 58.

<sup>165</sup> *Id.* at n. 59.

<sup>166</sup> *Id.* at 72, n. 60; 74, n. 61.

<sup>167</sup> *Id.* at 77-78.

<sup>168</sup> *Id.* at 79.

<sup>169</sup> *Id.* at 75, n. 62.

<sup>170</sup> HX 164(A) at 46, Table V-7.

<sup>171</sup> Staff Report at 71-79. Certain dealers, however, claim that the inspection process is uncertain or imperfect. *Id.* at n. 66. See discussion at II.D.2. *infra*.

<sup>172</sup> *Id.* at 38-57.

<sup>173</sup> Williams, TR 7610 (engine block); O'Dell, TR 3471 (brakes, hood, doors); Oppenheim, TR 1349 (transmission); Edwards, TR 950 (transmission, oil leaks; tires; brakes); Rothschild, TR 3286 (oil leaks, radiator, transmission). See also Staff Report at 38, n. 1.

<sup>174</sup> Staff Report at 39-42, nn. 2-5.

<sup>158</sup> Staff Report at 97-98, n. 94.

<sup>159</sup> *Id.* at 99, n. 95.

<sup>160</sup> *Id.* at 100-101, nn. 96, 97.

<sup>161</sup> Wisconsin Study, HX 164(A) at 43.

<sup>162</sup> Negri, dealer organization, TR 4103.

<sup>163</sup> Presiding Officer's Report at 48.

<sup>164</sup> Staff Report at 71-83.



disposal, as a general rule, information sufficient to arrive at an informed buying decision. Insofar as mechanical condition is concerned, consumers are dependent, with rare exception, on the seller's representations to inform them of mechanical condition.<sup>181</sup> The record also shows that many purchasers base their assessments of the condition and value of a particular vehicle on dealer oral representations and on the physical appearance of the car.<sup>182</sup> The record shows that consumer injury results from buyer reliance on oral representations and promises by the seller which are inconsistent both with the actual condition of the car as known to the dealer and with the terms of the written contract. Moreover, representations as to mechanical condition are seldom, if ever, incorporated into sales contracts. They are restricted almost entirely to oral statements made by the dealer during the selling process and, thus, are unenforceable should the consumer attempt to sue to recover damages for dealer misconduct.<sup>183</sup>

Based on the evidence in the rulemaking record, the Commission finds that used car dealers have knowingly misrepresented the mechanical condition of the cars they sell and thereby cause substantial injury to consumers.

**B. Prevalence of Deceptive Acts and Practices in the Marketplace.** In assessing the prevalence, or frequency, of deceptive practices occurring in the used car industry, the Commission has examined a number of factors. These include the number of consumer complaints reported to the Commission and to state and local agencies; documentary evidence such as written warranties and warranty disclaimers used by dealers in used car transactions; testimony offered by state and local law enforcement officers, consumer agency officials, legal aid attorneys, consumer group representatives, individual consumers, used car dealers, present and former used car sales agents, mechanics and automobile repair instructors; and empirical studies of

used car dealer practices, the mechanical condition of used cars on dealers' lots, and used car buyer attitudes and beliefs. This evidence is set forth in detail in section II.A. above, and establishes that many dealers misrepresent or fail to disclose material facts concerning the terms and extent of warranty coverage and the mechanical condition of cars at the time of sale.

In recent years approximately ten million used cars have been purchased annually from the nation's 60,000 used car dealers.<sup>184</sup> These dealers, as an established business practice, make oral representations concerning warranties and mechanical condition. The record demonstrates that many dealers or their sales agents make oral promises to repair after sale which are contradicted by "as is" warranty disclaimers or other written contract terms. Additionally, many dealers fail to inform consumers prior to purchase of limitations on warranties provided to them or of the meaning of key terms in the purchase contract (e.g., the "as is" clause). In those cases where warranty coverage is disclosed before the sale is consummated, it is typically in the pressured atmosphere of the "closing room", where consumers' full understanding of contract terms is thwarted. Consumers unexpectedly learn the full extent of their repair responsibility when dealers fail to honor these oral promises or when discrepancies between verbal and written warranties are discovered after sale.<sup>185</sup>

Moreover, the record demonstrates that many dealers also misrepresent the mechanical condition of the cars offered for sale. Several studies in the record demonstrate that dealer representations of condition at the time of sale are inconsistent with consumer perception of the condition of the car immediately after the sale.<sup>186</sup> The record reflects that, although many dealers obtain knowledge of defects in their cars during the regular course of acquiring and reconditioning them, dealers quite often

fail to disclose known defects to prospective purchasers.<sup>187</sup>

In the face of repeated testimony concerning the large number of used car complaints filed by consumers with consumer agencies or legal aid offices and record studies, some dealers and dealer organizations argue that the number of valid consumer complaints about used cars and used car dealers is insignificant when compared to the total volume of used cars sold.<sup>188</sup> The National Automobile Dealers Association (NADA) concludes that the National Analysts Study provides evidence that unfair and deceptive sales techniques are not prevalent in the used car industry.<sup>189</sup> Accepting the data that demonstrates 13 percent of the respondents in that study received inaccurate information, NADA concludes that the 13 percent deceptive rate figure does not establish prevalence.<sup>190</sup> Assuming approximately 10 million sales by used car dealers per year, a 13 percent deception rate would suggest a possible 1.3 million incidences of deception per year.<sup>191</sup> Data from the Wisconsin Study, cited by NADA,<sup>192</sup> demonstrate that 20.8 percent of the responding consumers report misrepresentation by dealers of mechanical defects.<sup>193</sup> The Commission believes that these record studies reveal a widespread occurrence of deceptive practices that is otherwise reflected in the rulemaking record.<sup>194</sup>

<sup>187</sup> In 85 percent of the cases, respondents in the National Analysts Study reported that the dealer did not disclose a single uncorrected mechanical problem prior to sale. HX 162(A) at Table 17. Similarly, used car buyers responding in the SRL Study were informed of specific defects in less than 1 percent of transactions with dealers. HX 160(A) at 13. Dealers in the CALPIRG Study, who were made aware of defects through diagnostic reports provided to them by test shoppers, failed to disclose major defects (costing \$100 or more to repair) in 75 of 101 cases. HX 82 at 11-12. See also Staff Report at 127-29.

<sup>188</sup> Staff Report at 42-43, n. 6. See, e.g., NIADA, S-739 at 70-72; NADA, S-738 at 174-187.

<sup>189</sup> NADA S-738 at 179.

<sup>190</sup> *Id.* at 179-180.

<sup>191</sup> This figure is based on 10 million sales per year by used car dealers. The significance of the National Analysts Study is enhanced by the fact that data are drawn from a sample of all purchasers in 20 states and is therefore not limited to complaints. HX 162(A) at 1-4. The Wisconsin Study data demonstrate a 17.1 percent deception rate. HX 164(A) at Table IV-4.

<sup>192</sup> NADA, S-738 at 181.

<sup>193</sup> Wisconsin Study, HX 164(A) at Table IV-21.

<sup>194</sup> The Commission has earlier noted limitations on its interpretation of the results of the CALPIRG Study. See n. 138 *supra*. Although the methodology and results of other record studies have been challenged (see Presiding Officer's Report at 105-116; Staff Report at 19-37), the Commission believes that these studies, while not necessarily flawless in methodology in every respect, provide probative

Continued

<sup>181</sup> Presiding Officer's Report at 90, 128.

<sup>182</sup> Staff Report at 118-122. The record does show that a minority of consumers obtain third-party inspections by independent mechanics. *Id.* at 93-95, 119-120. The record contains conflicting evidence as to whether such inspections are allowed throughout the industry. Dealers and others asserted that inspection opportunities are currently available to consumers. *Id.* at 87. However, the record demonstrates that off-premises inspections are not allowed on a regular basis. *Id.* at 89. Thus, in the current state of the market, consumers obtain little information about the mechanical condition of a prospective used car purchase from any source other than the dealer.

<sup>183</sup> Presiding Officer's Report at 47.

<sup>184</sup> Staff Report at 453, Appendix 1. For data on the number of used car dealers nationwide, see Mitchell, NADA and Lemov, NIADA, Oral Presentation before the Commission, September 25, 1979, TR 5, 84. Due to the current downturn in the automobile industry, this number may be declining. See NIADA, T-742 at 3.

<sup>185</sup> In the CALPIRG Study (where test shoppers saw a warranty before sale), verbal and written warranties given by dealers differed 34 percent of the time. HX 82 at 17.

<sup>186</sup> See, e.g., National Analysts Study, HX 162(A) at Tables 14, 15; SRL Study, HX 160(A) at Table 7; Wisconsin Study, HX 164(A) at Table IV-4; HX 116(A) at 4-5; HX 158(A) at 4-5; Staff Report at 103-107, nn. 102-107.



In addition, the Commission also recognizes that formal complaints actually filed by consumers represent only a small portion of problems experienced by used car buyers.<sup>195</sup> A scientific measure of the level of unreported problems was provided as an adjunct to one of the studies entered into the record. In that study, it was estimated that complaints reflect only one to three percent of actual problems.<sup>196</sup> Similarly, although the actual number of warranty and warranty disclaimer documents in the record is small, state and local consumer agency officials, legal aid attorneys, and some industry members report that they are typical of the industry.<sup>197</sup>

We, therefore, determine that the rulemaking record taken as a whole demonstrates the prevalence of deceptive practices. The clear and unavoidable conclusion established by the record is that many dealers do misrepresent or fail to disclose material facts relating to the dealer's responsibility for making repairs after sale or to the mechanical condition of vehicles offered for sale. The practices are pervasive and among the chief sources of complaints received by various consumer protection organizations throughout the country.<sup>198</sup> The record evidence is therefore sufficient to convince the Commission that these practices are prevalent and that action to protect the used car consumer from these deceptive practices is justified.

**C. Legal Basis for the Rule.—1. Rulemaking Authority.** The Commission's authority to promulgate this trade regulation rule is derived from two sources. The first of these is from Section 109(b) of the Magnuson-Moss Warranty Act, which states in pertinent part:

The Commission shall initiate within one year after the date of the enactment of this Act a rulemaking proceeding dealing with warranties and warranty practices in connection with the sale of used motor vehicles; and, to the extent necessary to supplement the protections offered the consumer by this title, shall prescribe rules dealing with such warranties and practices. In prescribing rules under this subsection, the

evidence of practices in the used car market which corroborates other record testimony.

<sup>195</sup> Staff Report at 44, n. 8; Andreasen, TR 6944-45; 6966-68; 6979-80. The Commission notes that dealer organizations, in their post-record comments, reject the "tip of the iceberg" theory. NIADA, S-739 at 70-71; NADA, S-738 at 173-174. The Commission notes that consumer complaints are but one measure of the existence of a market problem.

<sup>196</sup> Staff Report at 45, n. 9.

<sup>197</sup> *Id.* at 268-70, nn. 48, 50-55.

<sup>198</sup> Presiding Officer's Report at 47-48.

Commission may exercise any authority it may have under this title, or other law, and in addition it may require disclosure that a used motor vehicle is sold without any warranty and specify the form and content of such disclosure. (emphasis supplied)<sup>199</sup>

As the rulemaking record establishes, warranty practices in the used car market have resulted in significant consumer injury. In the preceding section of this Statement,<sup>200</sup> we have summarily described the practices which have deceived buyers about the extent and terms of their warranty coverage. There, we recounted evidence concerning oral misrepresentations by dealers about the scope and terms of warranty coverage as well as failures to disclose the limited nature of their post-sale repair responsibilities. In many instances, verbal promises to repair have been negated by final contract terms containing an "as is" clause which disclaims all responsibility for post-sale repairs. These promises are exacerbated by widespread consumer misunderstanding of the term "as is" and by dealer's failure to disclose, in an adequate and timely manner, the existence and meaning of this term.

These practices, therefore, fall squarely within the scope of § 109(b). By addressing them in a Rule, the Commission is following its statutory mandate "to supplement the protections offered to the consumer" by the Warranty Act.

The second source of statutory authority for this rulemaking is the Federal Trade Commission Act, a source implicitly preserved by § 109(b), which permits the Commission to "exercise any authority it may have under this title, or other law" in promulgating rules under that Section. Section 111(a)(1) of the Warranty Act is more explicit:

Nothing contained in this title shall be construed to repeal, invalidate or supersede the Federal Trade Commission Act \* \* \*<sup>201</sup>

Section 5(a)(1) of the FTC Act declares unlawful "unfair or deceptive acts or practices in or affecting commerce," and Section 18(a)(1)(B) of the Act authorizes the Commission to enforce that statutory provision by prescribing:

rules which define with specificity acts or practices which are unfair or deceptive acts or practices in or affecting commerce . . . Rules under this subparagraph may include requirements prescribed for the purpose of preventing such acts or practices.<sup>202</sup>

The foregoing section of this Statement describes practices which, as

discussed below, are deceptive practices under Section 5 of the Act.<sup>203</sup> In addition to the warranty practices outlined above, the record also demonstrates that used car buyers are often deceived about the mechanical condition of the cars they purchase by various practices.<sup>204</sup> These practices include affirmative misrepresentations about the car's condition and the failure to disclose, prior to sale, material defects in the car that are known to the dealer.<sup>205</sup> In addition, some dealers and their sales representatives have deceived consumers by claiming that a vehicle is free from defects without a reasonable basis for the claim.

These practices, as discussed below, are well within the parameters of deception under Section 5. As such, they may also be proscribed under Section 18(a)(1) of the FTC Act.

**2. Section 5 Analysis.** The Commission's authority to prevent consumer deception in the marketplace is well established.<sup>206</sup> The Commission and the courts have developed an extensive body of law concerning deceptive practices that proscribes misleading conduct. Section 5 is violated whenever a seller misrepresents or fails to disclose to a purchaser facts that are material to the consumer's purchasing decision, or lacks a reasonable basis to substantiate general product claims.<sup>207</sup>

**a. Affirmative Misrepresentations.** It is well settled that Section 5 prohibits both affirmative misstatements and representations that create a misleading impression in the minds of consumers. Where actual deception by affirmative misstatements can be shown, Section 5 is violated. Representations that have the tendency or capacity to deceive a substantial segment of the purchasing public, or that part of the public to

<sup>203</sup> Section II.A.1.c., 2.b. *supra*.

<sup>204</sup> The most serious of these forms of deception occurs in the sales of "as is" cars. At least 50 percent of all used cars are sold with no warranty. See Staff Report at 248-53; 295-300. See also Presiding Officer's Report at 46-47; 124-25.

<sup>205</sup> Section II.A.2.b. *supra*.

<sup>206</sup> See, e.g., *FTC v. Sperry and Hutchinson Co.*, 402 U.S. 233 (1972); *FTC v. Ruberoid Co.*, 343 U.S. 470 (1952).

<sup>207</sup> *Firestone Tire and Rubber Co.*, 81 F.T.C. 398 (1972), *aff'd* 481 F.2d 246 (6th Cir.), *cert. denied*, 414 U.S. 1112 (1973), *remanded in part* 492 F.2d 1333 (2d Cir. 1975); Statement of Basis and Purpose, Trade Regulation Rule for the Prevention of Unfair or Deceptive Advertising and Labeling of Cigarettes In Relation to the Health Hazards of Smoking, 29 FR 8324, 8350 (1964) (hereinafter cited as Cigarette Rule Statement); *FTC v. Colgate Palmolive*, 380 U.S. 374, 388-389 (1965); *FTC v. Raladam*, 316 U.S. 149 (1942); *FTC v. Algoma Lumber Co.*, 291 U.S. 67, 78 (1934); *FTC v. Royal Milling Co.*, 288 U.S. 212, 216-217 (1933).

<sup>199</sup> 15 U.S.C. § 2309(b).

<sup>200</sup> For further discussion of the abuses relating to warranties, see Section II.A.1. *supra*.

<sup>201</sup> 15 U.S.C. § 2311(a)(1).

<sup>202</sup> 15 U.S.C. 57a(a)(1)(B).



which the particular conduct is directed, are also proscribed under Section 5.<sup>208</sup>

To violate Section 5, a misrepresentation must mislead a consumer in a material respect.<sup>209</sup> The Commission has broad discretion in determining whether a misrepresentation concerns a material fact.<sup>210</sup> Although a material fact is generally defined as one which would influence the consumer's purchasing decision, the misrepresentation need not be tied directly to the product to be deemed material.<sup>211</sup> Thus, any extrinsic fact that influences consumer purchasing decisions may be material.<sup>212</sup> Where actual consumer deception is demonstrated, the materiality requirement is reduced.<sup>213</sup> The literal truth or falsity of a challenged sales representation is not at issue when analyzing whether the representation is deceptive under Section 5. Instead, a seller's claims must be viewed in their entirety and evaluated in light of the reasonable expectation or understanding of the expected consumer audience.<sup>214</sup> If the claim, either directly or indirectly, creates an erroneous or misleading impression in the minds of consumers, it is deceptive.<sup>215</sup> Moreover, the determination as to the likelihood of deception can be inferred by the Commission in the exercise of its accumulated expertise.<sup>216</sup>

We have set forth in detail earlier the affirmative misrepresentations and outright falsities that frequently occur in

the used car market.<sup>217</sup> We have shown that dealers frequently assure consumers that cars are in sound condition when in fact the car has defects that exist at the time of sale.<sup>218</sup> We have also described the dealer misrepresentations concerning the extent and scope of warranty coverage, including those which lead consumers to believe that the dealer will assume some responsibility for postpurchase repairs on cars sold "As Is." Undoubtedly, some of the dealer misrepresentations made in the course of a used car sales pitch are "puffery," for which trade regulation law has always made allowances.<sup>219</sup> But, we are dealing here with a highly complex product subject to defects at the time of sale and sold to consumers who have little or no ability to independently assess the quality or reliability of the product. Accordingly, the Rule has been drafted to ensure that the leeway traditionally granted a seller to "puff" his or her product is not so broad that it also permits deception.<sup>220</sup>

Some of the dealer misrepresentations set forth earlier are outright falsities; some are misrepresentations that create a misleading net impression in the consumer's mind about the value and anticipated operating costs of the used cars purchased. These affirmative misrepresentations, which induce consumers to purchase cars they might not otherwise buy, or to pay more than they otherwise would for the cars they purchase,<sup>221</sup> are among the clearest forms of deception presented to the Commission. It is certainly true that some consumers, either because of mechanical knowledge or a skeptical attitude toward salespeople, may not be misled by these kinds of misrepresentations.<sup>222</sup> However, this fact does not alter our assessment that dealer misrepresentations of warranty coverage and mechanical condition have the tendency and capacity to deceive a substantial segment of the

purchasing public. We therefore conclude that such dealer misrepresentations violate Section 5.

b. *Nondisclosure of Material Facts to Used Car Buyers.* In applying Section 5 to the many factual patterns that have come before the Commission, we have repeatedly concluded that a seller can deceive as much by silence as by an affirmative misstatement of fact. In "pure" nondisclosure cases, where no representations have been made by the seller, we have found undisclosed facts to be material by virtue of the reasonable assumptions consumers make on the basis of a product's nature, appearance, or intended use.<sup>223</sup> In other cases, undisclosed facts become material because of representations which, though true in and of themselves, are in fact only "half-true" and require further explanation or qualification to avoid creating misimpressions in the minds of consumers.<sup>224</sup> The general principle articulated in these cases is that "Section 5 forbids sellers to exploit the normal expectations of consumers in order to deceive just as it forbids sellers to create false expectations by affirmative acts."<sup>225</sup>

The record of this proceeding reveals that warranty terms and "as is" disclaimers frequently are not made available in writing to the consumer until after the decision to buy has been made and the consumer is confronted with a myriad of documents to be examined and signed in the dealer's closing room.<sup>226</sup> The failure by dealers to

<sup>208</sup> *FTC v. Colgate Palmolive Co.*, 380 U.S. 374 (1965); *FTC v. Standard Education Society*, 302 U.S. 113 (1937); *FTC v. Algoma Lumber Co.*, 291 U.S. 87, 81 (1934); *J.B. Williams v. FTC*, 381 F.2d 884, 889 (6th Cir. 1967); *Montgomery Ward v. FTC*, 379 F.2d 666, 670 (7th Cir. 1967); *Feil v. FTC*, 285 F.2d 879, 896 (9th Cir. 1960); *The Raymond Lee Organization, Inc.*, 92 F.T.C. 489, 608 (1978); *Horizon Corporation*, — F.T.C. — (Dkt. No. 9017, issued May 15, 1981).

<sup>209</sup> *FTC v. Colgate Palmolive Co.*, *supra* at 386-392 (1965); Cigarette Rule Statement, at 8351.

<sup>210</sup> *FTC v. Colgate Palmolive Co.*, *supra*; *Simeon Management Corp. v. FTC*, 579 F.2d 1137 (9th Cir. 1978).

<sup>211</sup> *ITT Continental Baking Co. v. FTC*, 532 F.2d 207 (2d Cir. 1976); *Ideal Toy Corp.*, 64 F.T.C. 297 (1964).

<sup>212</sup> *FTC v. Colgate Palmolive Co.*, *supra* at 386-87.

<sup>213</sup> *Baldwin Bracelet Corp.*, 61 F.T.C. 1345, 1362-63 (1962), *aff'd*, 325 F.2d 1012 (D.C. Cir. 1963), *cert. denied*, 377 U.S. 923 (1964); *Gimbel Bros. Inc. v. F.T.C.*, 116 F.2d 578 (2d Cir. 1941); *Travel King, Inc.*, 86 F.T.C. 715, 772-74 (1975).

<sup>214</sup> *J.B. Williams v. FTC*, 381 F.2d 884, 889 (6th Cir. 1967); *Carter Products Inc. v. FTC*, 323 F.2d 523, (5th Cir. 1963). Deception can result from the consumer expectations created by the setting in which a sales representation is made as well as by the seller's verbal misrepresentations. *Peacock Buick, Inc.*, 86 F.T.C. 1532, 1555 (1975).

<sup>215</sup> See *Kalwajits v. FTC*, 237 F.2d 654, 656 (7th Cir. 1956); *Developments in the Law of Deceptive Advertising*, 80 Harv. L. Rev. 1008 (1967).

<sup>216</sup> *FTC v. Standard Education Society*, *supra* at 116-117; *FTC v. Colgate Palmolive Co.*, *supra* at 391-392.

<sup>217</sup> See Section II.A *supra*.

<sup>218</sup> The effect of these misrepresentations is enhanced by the fact that they are often made in connection with vehicles that have been cosmetically reconditioned so as to appear relatively new and therefore more desirable to unsophisticated consumers, who lack mechanical knowledge and who reasonably equate exterior appearance with mechanical condition. Staff Report at 99-100.

<sup>219</sup> See, e.g., *Carlay Co. v. FTC*, 153 F.2d 493 (7th Cir. 1946).

<sup>220</sup> See Cigarette Rule Statement, at 85; *Beneficial Corp. v. FTC*, 542 F.2d 611, 617-18 (3d Cir. 1976), *cert. denied*, 430 U.S. 983 (1977); *Charles of the Ritz Distrib. Corp. v. FTC*, 143 F.2d 676, 679 (2d Cir. 1944).

<sup>221</sup> See Staff Report at 58-63, 67-70, 103-128; Presiding Officer's Report at 23-24, 46-47, 98-99, 124-128, 135.

<sup>222</sup> Staff Report at 441-42.

<sup>223</sup> *All-State Industries, Inc. v. FTC*, 423 F.2d 423 (4th Cir.), *cert. denied*, 400 U.S. 828 (1970); *Benrus Watch Co. v. FTC*, 352 F.2d 313 (8th Cir. 1965); *Mohawk Refining v. FTC*, 263 F.2d 818 (3d Cir. 1959); *Mary Muffet Inc. v. FTC*, 194 F.2d 504 (2nd Cir. 1952); *Alberty v. FTC*, 182 F.2d 36 (D.C. Cir.), *cert. denied*, 340 U.S. 818 (1950); *Segal v. FTC*, 142 F.2d 255 (2d Cir. 1944); Statement of Basis and Purpose, Trade Regulation Rule, Labeling and Advertising of Home Insulation ("R-Value"), 44 FR 50216 (1979), 16 CFR 460 (hereinafter cited as "R-Value Rule Statement"); Statement of Basis and Purpose, Trade Regulation Rule: Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures, 43 FR 59014 (1978), 16 CFR 36; Statement of Basis and Purpose, Trade Regulation Rule: Care Labeling of Textile Wearing Apparel, 36 FR 119 (1971), 16 CFR 423.

<sup>224</sup> *Simeon Management Corp. v. FTC*, *supra*; *J.B. Williams Co.*, 86 F.T.C. 481 (1965), *aff'd*, 381 F.2d 884 (6th Cir. 1967); *P. Lorillard Co. v. FTC*, 186 F.2d 52 (4th Cir. 1950).

<sup>225</sup> Cigarette Rule Statement at 89. See also R-Value Rule Statement at 50223.

<sup>226</sup> "It is a matter of common sense and experience that, having engaged in an initial round of bargaining over the purchase of an automobile, having reached a tentative agreement, and having returned to the dealership for the final signing of papers, many consumers will find themselves reluctant to back out, even if certain material changes are made in the terms which might have

Continued



provide a clear, understandable explanation of such important contractual provisions in a manner likely to draw the consumer's attention effectively deprives consumers of important information. As a result, consumers are unable to properly determine the overall value of a used car or properly calculate the true costs of ownership.

We have also previously described the evidence in the record indicating that used car dealers often fail to disclose known defects in the mechanical condition of used cars, and in other instances, disclose some, but not all, defects.

This defect information is material to the consumer's purchasing decision. If the consumer were aware of such defects, he or she might choose another car, offer less for the car, or negotiate for repairs or more extensive warranty coverage. Indeed, the record discloses that consumers rank mechanical condition information as a primary factor in the purchasing decision.<sup>227</sup> The withholding of defect information thus gives the dealer an undeserved bargaining advantage and distorts the competitive operation of the market.

Substantial consumer injury results from dealer failures to disclose defect information. In the absence of such information, consumers are unable to assess the total ownership cost of a particular vehicle. As a result, many consumers are faced with unanticipated repairs shortly after purchase. Moreover, without information about defects that are known to the dealer, consumers are unable to evaluate the warranty coverage offered on a car and thus are unable to determine if they are adequately protected from unanticipated repairs.<sup>228</sup>

In short, these dealer practices leave consumers with a false impression of a car's overall value. As a result of dealer nondisclosure of known defects, consumers do not receive information that is material to the purchasing decision and subsequently incur injury from unanticipated repairs. In our view, section 5 does not permit dealers to withhold information about material defects when consumer injury results

from such nondisclosure.<sup>229</sup> Therefore, because dealer failure to disclose such essential information has the tendency and capacity to deceive consumers, the Commission concludes that these practices violate section 5.

#### c. Lack of Reasonable Basis.

Misrepresentations, either express or implied, that there is a reasonable basis in fact for claims made concerning the safety or performance characteristics of a product are deceptive and violate section 5.<sup>230</sup> It is deceptive for a seller or his agent to make representations of a product's good quality or reliability which are not based on facts known to that seller or agent. This is particularly true with respect to complex and highly technical products that are not easily evaluated without special knowledge or expertise.<sup>231</sup>

The record demonstrates that used car dealers and their sales agents frequently make representations about the satisfactory condition of used cars and their components.<sup>232</sup> Although many used car dealers obtain considerable knowledge about the vehicles they acquire (and their defects),<sup>233</sup> the record also shows that industry members make statements about the vehicle's mechanical condition with insufficient information to support such representations.<sup>234</sup> Survey evidence further indicates that sales agents—who may be uninformed about defects known to the dealer<sup>235</sup>—frequently make favorable statements about a car's mechanical condition that are later found by buyers to be inaccurate.<sup>236</sup> As we previously noted, consumers tend to rely on these representations.<sup>237</sup>

As we have stated in the past, a buyer is entitled to representations that are more than mere surmise on the part of the seller.<sup>238</sup> This is particularly so in the used car market, where the product being sold is complex, and where, as a result, most consumers cannot practically ascertain the truthfulness of claims before purchase. Therefore, we find that the making of unsubstantiated claims that a used car or a component thereof is free from defects or is in good overall condition by a used car dealer or his sales agent is a deceptive practice that violates Section 5.<sup>239</sup>

D. Remedies. Section 109(b) of the Magnuson-Moss Warranty Act explicitly authorizes the Commission to issue rules "dealing with" used car warranties and warranty practices and, in prescribing such rules, to require a "disclosure that a used motor vehicle is sold without any warranty" as well as the specific "form and content of such a disclosure."<sup>240</sup> Complementary remedial authority is found in Section 18 of the FTC Act, which authorizes the Commission, in addition to issuing rules defining unfair or deceptive practices, to include in its rules "requirements prescribed for the purpose of preventing such acts or practices."<sup>241</sup>

In fashioning any such remedy for the deceptive practices found to exist in the rulemaking record, the Commission is bound to show a "reasonable relationship" between the remedy and the practice.<sup>242</sup> After a careful examination of the record, the Commission has developed a Rule that it believes will be an effective remedy for the deceptive practices in the used car industry. The Commission, therefore, believes that the Rule and each of its elements described below represent a justifiable exercise of its statutory authority.

1. Warranty, "As Is" Disclosures. The record clearly demonstrates that "as is" sales are fraught with dealer misrepresentations regarding both mechanical condition of cars sold and

affected purchasing decisions had they been known earlier." *Peacock Buick, Inc.*, 86 F.T.C. 1532, 1562-63 (1975).

<sup>227</sup> HX 164(A) at 43. See also NIADA, S-739 at 112.

<sup>228</sup> It is true that consumers do not expect that used cars will be in perfect condition when offered for sale. However, they may reasonably believe that used car dealers will advise them of known defects affecting a car's major mechanical systems. Such beliefs are naturally reinforced by affirmative dealer representations concerning the condition of cars they are selling.

<sup>229</sup> Cf. *Peacock Buick, Inc.*, *supra* n. 214, at 1557-8, 1560-2.

<sup>230</sup> *Porter and Dietsch, Inc.* 90 F.T.C. 770 (1977), modified 605 F.2d 294 (1979), cert. denied 445 U.S. 950 (1980); *National Dynamics Corp.* 82 F.T.C. 428 (1973), remanded on other grounds, 492 F.2d 1333 (2nd Cir.), cert. denied, 419 U.S. 993 (1974), modified, 85 F.T.C. 391 (1975), further modified, 85 F.T.C. 1053 (1975); *Firestone Tire and Rubber Co.*, *supra*.

In *Pfizer, Inc.*, 81 F.T.C. 23 (1972), we said that the failure to possess a reasonable basis for product claims is unfair within the meaning of section 5. However, in *National Dynamics* and *Porter and Dietsch*, both cases grounded on our authority to regulate deception, we stated that, whether a product claim is analyzed from the standpoint of unfairness or deception, the standard is the same—whether or not the seller possesses material or data which provides a reasonable basis to substantiate the product claim. See 90 F.T.C. at 866, n. 11; 82 F.T.C. at 550, n. 10.

<sup>231</sup> See *Pfizer, supra*; R-Value Rule Statement at 50225, n. 182.

<sup>232</sup> See Section II.A.2.b. *supra*.

<sup>233</sup> See Section II.A.2.c. *supra*.

<sup>234</sup> Staff Report at 103-105, n. 102.

<sup>235</sup> Bigham, TR 5274-77.

<sup>236</sup> National Analysts Study, HX 162(A) at Tables 1, 16, 17; Staff Report at 110-115.

<sup>237</sup> Section II.A.2.d. *supra*.

<sup>238</sup> *National Commission on Egg Nutrition*, 88 F.T.C. 84, 91 (1976), enforced as modified, 570 F.2d 157 (7th Cir. 1977).

<sup>239</sup> See, e.g., *Pfizer, supra*; *Firestone Tire and Rubber Co.*, *supra*.

<sup>240</sup> 15 U.S.C. 2309(b).

<sup>241</sup> 15 U.S.C. 57a(a)(1)(B). The Commission's authority to adopt such requirements was recognized in *Katharine Gibbs School v. FTC*, 612 F.2d 658, 662 (2nd Cir. 1979).

<sup>242</sup> *F.T.C. v. National Lead Co.*, 352 U.S. 419, 428-29 (1957); *Jacob Siegel Co. v. FTC*, 327 U.S. 608 (1946). This st



dealer after-sale repair responsibility.<sup>243</sup> In addition, the record demonstrates that many consumers do not understand the nature of an "as is" sale.<sup>244</sup> Such ignorance is aggravated by dealer practices which result in inconspicuous, untimely and unclear disclosures.<sup>245</sup> The record further demonstrates that dealers orally misrepresent the terms of written warranties and service contracts and fail to make timely, conspicuous and clear disclosure of warranty and service contract terms.<sup>246</sup>

To remedy these deceptive practices, the Rule requires that, on the window sticker, dealers indicate whether a warranty is offered or whether the car is sold "as is", i.e., without any warranties.<sup>247</sup> If a warranty is offered, the dealer must disclose on the sticker the systems that are covered, the percentage of total repair costs paid for by the dealer and the duration of the warranty.<sup>248</sup> If a service contract is offered, the dealer must indicate its cost.

Some industry members argue that warranty, "as is" disclosure requirements are unnecessary because they duplicate the pre-sale availability requirements of the Magnuson-Moss Warranty Act and existing state law with regard to "as is" disclosures.<sup>249</sup> The warranty and "as is" disclosures required by this Rule do not duplicate Magnuson-Moss Act requirements but supplement them as specifically directed by Congress in Section 109(a). Section 109(a) specifically directed the Commission to address, with regard to the used car industry alone, the appropriate disclosure for sales in which "no warranty" was given. The Act itself does not require disclosures regarding "as is" sales. Likewise, state laws with regard to "as is" sales do not require point of sale disclosures but disclosure prior to consummation, i.e., in the "closing room."<sup>250</sup>

These requirements will remedy the deceptive practices of misrepresentation concerning post-sale repair responsibilities and failure to disclose warranty coverage. Moreover, the fact that the disclosures will be available to consumers on a window sticker will

ensure that consumers will receive warranty information at a time when the information can influence their purchasing decision. Therefore, the warranty disclosure provisions of the Rule, which respond directly to the dealer deceptions about warranties, will provide an effective remedy for the documented abuses.

2. Disclosure of Known Defects. The record shows that dealers go to great lengths to learn the mechanical condition of the cars they sell.<sup>251</sup> They obtain knowledge of defects from various sources. The record reflects that, at auctions, dealers may inspect after purchase and, in fact, may rescind or renegotiate if problems found are severe. After purchase by dealers, additional defects are discovered during further inspections, appearance reconditioning and repairs. In addition, dealers also become aware of defects through third-party service contract company inspectors (who examine cars for defects when deciding which cars qualify for the service contract), through sellers, and through selling or servicing the car previously.<sup>252</sup>

Despite their knowledge of defects, many dealers do not disclose defects to prospective purchasers.<sup>253</sup> However, the record also shows that, when dealers are faced with an obligation to disclose known defects, they are likely to comply rather than evade the requirement. Although Wisconsin's mandatory inspection and disclosure law is not a perfect analogue to the Commission's Rule,<sup>254</sup> it is worthy of note that under the Wisconsin law more buyers received pre-purchase defect information from dealers.<sup>255</sup> This increase in disclosure of

defects is even more significant in light of the fact that costs of dealer inspections did not increase substantially;<sup>256</sup> from this we conclude that dealers did not simply begin to find more defects but instead began to disclose more defects.

The Commission notes that certain dealer commentators stated that the inspection process is itself uncertain and imperfect.<sup>257</sup> Industry participants also claimed that the record does not support a finding that dealers know about actual or latent defects in cars they sell<sup>258</sup> or that the occurrence of defects soon after purchase of a used car evidences dealer knowledge or misrepresentation.<sup>259</sup>

The Commission does not argue that the inspection process is perfect. Instead, it has looked to the preponderance of record evidence to determine that, in general and as stated herein, dealers often do have knowledge of specific significant defects and often fail to disclose them to prospective purchasers. In addition, many dealers misrepresent the mechanical condition of used cars.

The Commission also recognizes that, while the Presiding Officer in this proceeding was reluctant to find that dealers generally have knowledge of specific defects in cars they sell,<sup>260</sup> he noted the numerous inferences that could be drawn from the record.<sup>261</sup> First, the Presiding Officer concluded that individual cases on the record indicated instances of actual misrepresentation by dealers of facts concerning the mechanical condition of individual vehicles.<sup>262</sup> Second, the Presiding Officer concluded that record surveys and studies demonstrate the extent of defects present in vehicles which were either disguised prior to sale or which were detected after the sale had been concluded.<sup>263</sup> The Presiding Officer, however, was not willing to infer from specific instances in the record that failure to disclose known defects was a

<sup>251</sup> *Id.* at 71-83.

<sup>252</sup> *Id.*

<sup>253</sup> In one record study, dealers actually were given the results of independent third-party inspections but consistently failed to convey that information to prospective purchasers. Other evidence on the record indicates that consumers are not told of defects existing in cars at the time of sale and subsequently must bear the unanticipated costs of repairs. See Staff Report at 38-57, 110-126.

<sup>254</sup> There are important differences between the Commission's Rule and the Wisconsin law. Under the Wisconsin law, dealers must inspect and check either "OK" or "Not OK" for each system and subsystem listed on a disclosure statement. It could be argued that dealers in Wisconsin have some incentive to check "Not OK", thereby disclosing known defects, since an "OK" check may carry post-sale repair responsibilities for the dealer.

<sup>255</sup> The Wisconsin Study indicates that 28.1 percent of pre-law used car buyers who bought from dealers were aware of defects prior to purchase. This percentage increased to 38.7 percent among those who purchased from dealers following passage of the mandatory inspection law, HX 164(A) at Table IV-12. This increase in defect awareness was accompanied by an increase in the number of buyers who stated that their knowledge of defects came from information supplied by the dealer. In the Wisconsin Study, one percent of pre-

law respondents said that they learned of defects before purchase from dealers. In the post-law sample, 9 percent said they learned of defects before purchase from dealers. Computed from data in HX 164(A). See also Staff Report at 122.

<sup>256</sup> Staff Report at 228. The record shows that, after implementation of the Wisconsin law, two-thirds of the dealers reported that they incurred no additional costs to inspect in order to comply with the mandatory disclosure scheme. HX 164(A) at Table V-8.

<sup>257</sup> Staff Report at 79, n. 66.

<sup>258</sup> See, e.g., NIADA, S-739 at 76.

<sup>259</sup> *Id.* at 74. NIADA also cites to the Presiding Officer's Report at 129-130 to buttress its conclusion. *Id.* at 74, nn. 126-127.

<sup>260</sup> Presiding Officer's Report at 135.

<sup>261</sup> *Id.*

<sup>262</sup> *Id.*

<sup>263</sup> *Id.*

<sup>243</sup> Staff Report at 103-130, 262-280, 295-299; NIADA, S-739 at 82-83.

<sup>244</sup> See n. 92 and accompanying text, *supra*.

<sup>245</sup> Staff Report at 262-80; 295-300; NIADA, S-739 at 82-83.

<sup>246</sup> *Id.* at 280-290; 303-305.

<sup>247</sup> This remedial approach has been commented upon favorably by one industry organization. See NIADA, S-739 at 112-113, 120-121, Appendix B.

<sup>248</sup> *Id.* at 111-113, 120-121, Appendix B.

<sup>249</sup> See Merrill-Wahus, dealer organization, T-165; Sapp, dealer organization, T-503; Stores, dealer organization, T-567; Boniface, dealer, T-217; Nicholson, dealer, T-710; Lohmann, dealer, T-714.

<sup>250</sup> Staff Report at 483-498.



customary industry practice.<sup>264</sup> Nevertheless, the Commission believes that the record establishes that failure to disclose known defects is at least sufficiently prevalent to form the basis for the Rule's defect disclosure requirement.

Like the warranty disclosure provisions of the Rule, the requirement of affirmative disclosure of certain major known defects at the point of purchase responds directly to the deceptive practice established by the record of failure to disclose known defects.<sup>265</sup>

Moreover, defect disclosures enhance the value and effectiveness of the warranty disclosures to consumers. With information available about certain major defects known to the dealer, consumers will be able to assess more accurately the true costs of ownership, *i.e.*, purchase price plus repair costs for defects. Their purchasing decisions can incorporate consideration of a car's condition and expected future repair costs, and thus consumer injury resulting from unanticipated repair costs should be reduced. We anticipate that more accurate knowledge about the true condition of a car will also allow the consumer to assess more accurately the value of warranty coverage and will increase bargaining for desired warranty coverage and price on a car of known condition.<sup>266</sup>

In arriving at a final decision regarding which defects should be disclosed by dealers if known, the Commission relied on various record sources. The Commission reviewed record studies that identify those major systems of used cars which failed immediately after sale, which failed frequently, and which were not discovered by the consumer prior to purchase.<sup>267</sup> These studies provided corroboration of anecdotal testimony.<sup>268</sup>

<sup>264</sup> *Id.*

<sup>265</sup> See, e.g., *Simeon Management Corp. v. FTC*, supra; *All-State Industries of North Carolina, Inc.*, supra; Cigarette Rule Statement at 8352.

<sup>266</sup> Evidence from the Wisconsin Study suggests consumers are least likely to be aware of mechanical defects such as those involving the transmission, brakes, exhaust system, etc., before purchase and most likely to discover these defects after purchase. In that study, when consumers became aware of defects prior to purchase, many felt such awareness did affect their bargaining. Dealers were most likely to respond by repairing the defects or reducing the price of the car. HX 164(A) at 26-27, Tables IV-13, IV-14. See also NIADA, S-739 at 112.

<sup>267</sup> SRL Study, HX 160(A) at 10, Tables 6, 7; Wisconsin Study, HX 164(A) at Tables IV-4, IV-14, IV-18; Northern California Auto Club Study, HX 116(A) at 4-5; Missouri Auto Club Study, HX 158(A) at 4-5; National Analysts Study, HX 162(A) at 29.

<sup>268</sup> Staff Report at 38-42, nn. 1-5.

Furthermore, the Commission referred to the determinations of the Department of Transportation<sup>269</sup> and the State of Wisconsin,<sup>270</sup> as embodied in their respective regulations and laws, concerning those mechanical systems that are important to an automobile's safety and normal operation. In addition, the Commission has relied on the DOT and Wisconsin inspection protocols to enable it to define material defects in an objective manner. Consequently, the Commission reduced staff's proposal in regard to which defects were to be disclosed.<sup>271</sup>

Of course, the defect disclosure will be effective only if dealers have a clear idea of their compliance obligations and if consumers understand both the significance and limits of the information. The Commission thus has limited the disclosure only to certain material defects<sup>272</sup> and only to those circumstances when the dealer has reason to know the defect exists.<sup>273</sup> Moreover, the disclosure is drafted so that consumers will be aware of the fact that dealers have no obligation to inspect prior to purchase.<sup>274</sup> Therefore, the Commission concludes that the known defect disclosure is an effective remedy that is reasonably related to the deceptive practices regarding mechanical condition.

3. Spoken Promises Warning. The Rule also requires a disclosure to consumers that, unless oral promises are reduced to writing, they are difficult to enforce. As noted above, the record is replete with evidence that dealers orally

misrepresent both the mechanical condition of used cars and the dealer's after-sale repair responsibility.<sup>275</sup> The record demonstrates that consumers rely on oral statements made by dealers at the point of purchase even though those oral statements are not confirmed in writing.<sup>276</sup> Consumers are therefore frequently deceived at the point of purchase by representations which are not only untrue but also unenforceable. A warning to consumers that all oral promises should be reduced to writing is therefore clearly justified by the record.<sup>277</sup>

We believe that the level of oral misrepresentation at the used car lot can be reduced if consumers are informed of the need to secure a written record of all promises made in connection with a used car sale.<sup>278</sup> By introducing this information into the used car market, the Commission expects consumer reliance on oral statements to decrease and insistence on a written confirmation of representations made at the time of sale to increase. If the consumer is able to obtain written confirmation of those statements in a sales contract which can be used in the event of a dispute, many dealers are likely to be more reluctant than they are at present to make false or misleading oral statements. As a result, a "spoken promises" warning should act as a deterrent to deception in the used car market and is clearly related to deceptive practices by used car sellers.

4. List of Major Mechanical and Safety Systems. The list of major mechanical and safety systems is designed to address the record evidence that misrepresentations concerning mechanical condition are often made on a system-by-system basis.<sup>279</sup> The

<sup>269</sup> See model safety inspection prepared by the Department of Transportation, National Highway Traffic Safety Administration, pursuant to Section 402 of the Highway Safety Act of 1966, Pub. L. 89-563, 23 U.S.C. 402.

<sup>270</sup> Wis. Admin. Code, Ch. 24.03.

<sup>271</sup> See Staff Memorandum to the Commission, Final Recommendations Concerning Used Car TRR, dated January 14, 1981, at 36, Attachment F.

<sup>272</sup> See discussion of Rule §§455.2(c) and 455.6 in Section III *infra*. The list of defects is based on both the Wisconsin disclosure law used in that state since 1974 and the Department of Transportation's model state safety inspection standards, 49 CFR 570.2. These origins support the materiality of the items on the list. The Wisconsin disclosure scheme was drafted by a committee of state officials, dealers and consumer groups, and a dealer is credited as the author of much of the language of the defect list. Moschkau, TR 1022-23, 1029-30. The DOT list was based on a wide variety of sources representing the state of the art in motor vehicle inspection. Vetter, HX 181 at 5-8. The record indicates that, although ample opportunity was provided for participants to explore the criteria through cross-examination, there was no questioning directed to either the substance of the standards or the procedure utilized by DOT in adopting those standards.

<sup>273</sup> See discussion of Rule section 455.2(c) in Section III *infra*.

<sup>274</sup> See discussion of Rule section 455.6 in Section III *infra*.

<sup>275</sup> Staff Report at 103-130; 262-90; 295-315.

<sup>276</sup> *Id.* at 108-110, 274-277. While industry recognizes that oral misrepresentation occurs, it denies prevalence. See, e.g., NIADA, S-739 at 70-71; NADA, S-738 at 174-187.

<sup>277</sup> Industry members also recognize the need for such a disclosure. See, e.g., Virginia Independent Automobile Dealers Association, T-700 at 9; NIADA, S-739 at 121; NIADA, T-742 at Appendix 1. Industry objections to earlier proposals for this disclosure were addressed to tone rather than substance. See, e.g., NADA, T-740; Antoniewicz, dealer organization, T-500; Sapp, dealer organization, T-503. The language of the disclosure has since been modified.

<sup>278</sup> The Commission notes that certain industry members reach a similar conclusion. See NIADA, S-739 at 112-113.

<sup>279</sup> Staff Report at 109-115. Originally the list of major mechanical and safety systems was circulated in the rulemaking proceeding as part of a window sticker which included inspection results for each major system. While the Commission has decided against a rule that would include inspection requirements, it has decided to retain the major systems list as a means of overcoming oral misrepresentations and as a means of gauging warranty coverage.



components listed are those most likely to be represented by dealers as being in good condition without any confirmation of such representations in writing.<sup>280</sup>

The list of systems on the Buyers Guide is reasonably related to these abuses. The list provides a framework for consumers to evaluate the extent of the warranty coverage which must be indicated on the warranties section of the sticker. Consumers will also be able to utilize the list when comparing the warranties offered on different cars or offered by different dealers. The list also serves other remedial purposes. By identifying the major components of the car, the list counters the specific dealer misrepresentations that certain consumer-noted problems are minor.<sup>281</sup> It also identifies for consumers the systems about which they may wish to ask the dealer (or which they may wish to have inspected by a third party prior to purchase) and provides a context for consumers to obtain substantiation of general representations.<sup>282</sup>

5. Notice of Availability of Pre-Purchase Inspection Opportunity. Pre-purchase inspection by a third party can provide consumers with valuable information regarding the mechanical condition of a used car and can considerably enhance the consumer's bargaining position.<sup>283</sup> However, the record demonstrates that few consumers actually seek independent inspections by a qualified mechanic.<sup>284</sup> The record shows that this result is in part caused by certain dealer practices which discourage the consumer's use of independent pre-purchase inspections.<sup>285</sup>

Dealers make general representations that their cars are in sound mechanical condition and fail to disclose known defects.<sup>286</sup>

Consumers rely on dealer representations of sound mechanical condition and thus do not perceive a need to obtain an independent pre-purchase inspection.<sup>287</sup> In addition, the record demonstrates that dealers commonly "detail" cars. Since consumers often believe that "good looking" cars are "good running" cars, this dealer practice discourages

consumer belief in the need for inspections.<sup>288</sup>

Although the record does not support imposition of a mandatory right to independent, off-the-lot, pre-purchase inspections,<sup>289</sup> it does support a remedy which suggests that consumers inquire about the availability of an independent, pre-purchase inspection.<sup>290</sup> The notice allows consumers to gauge dealer representations concerning mechanical condition by measuring those representations against dealer willingness to permit third-party inspections and independent confirmation of such representations. In addition, such a disclosure not only focuses consumer attention on the idea of pre-purchase inspection as a means of evaluating a car's mechanical condition but also provides consumers with a means of comparison shopping among the various terms and conditions offered by different used car dealers.

### III. Section-by-Section Analysis

#### Section 455.1(a)—List of Deceptive Acts or Practices

The record of this rulemaking proceeding documents the widespread occurrence of a variety of deceptive practices in the used car market. These practices are specifically enumerated in this subsection of the Rule.<sup>291</sup> As set forth below, engaging in any of the practices enumerated in this section is not a violation of the Rule. Compliance with the Rule is attained by meeting the requirements of Sections 455.2 through 455.6 of the Rule. Nevertheless, the Commission, based on the record of this proceeding, considers these practices to be deceptive under Section 5 of the Federal Trade Commission Act, so that violators will be subject to future law enforcement actions by the Commission.

#### Section 455.1(b)—Definition of Rule Violation

As noted immediately above, compliance with the Rule is attained by meeting the requirements of Sections 455.2 through 455.6 of the Rule. Each violation of this Rule, which is issued pursuant to Section 18 of the Federal Trade Commission Act, carries a civil penalty of up to \$10,000 which the

Commission may seek in the appropriate federal district court. It is therefore essential that the provisions of this Rule precisely describe the responsibilities of each person covered. To insure such precision, this subsection limits any rule violation to the failure to comply with the remedial provisions set forth in Sections 455.2 through 455.6 of the Rule. By defining a Rule violation in terms of compliance with these explicit requirements, there is no question as to the steps that a used car dealer must take to comply with the Rule.

#### Section 455.1(c)—Definitions

The scope of the Rule adopted here is determined largely by the definition of key terms described in this subsection. As set forth below, each of these terms has been specifically defined so as to insure the most appropriate coverage of the Rule.

#### Section 455.1(c)(1)—"Vehicle"

As initially proposed,<sup>292</sup> the Rule would have covered any motorized vehicle, including motorcycles, designed to carry not more than 15 people. However, upon consideration of the evidence in the record, the Commission has concluded that, while the definition of "vehicle" should be broad enough to include the many personal use vehicles on the market, the definition should not be so broad as to cover vehicles that are generally used for commercial activity. Under § 455.1(c)(1), coverage of the Rule has been limited to vehicles, other than motorcycles, of a size and weight most often purchased by individual consumers.<sup>293</sup>

In commenting on the mandatory inspection rule, some participants suggested that the rule be limited to newer cars by an age ceiling and/or price floor.<sup>294</sup> Without such a limitation, these commentators argued, the mandatory inspection rule would force dealers to cease selling older cars; those cars would instead be sold on the unregulated private market. However, the record shows that, in Wisconsin, after the passage of a mandatory inspection law, the median age of cars sold by dealers did not decline.<sup>295</sup> Therefore, based on our review of the evidence, we have concluded that the Rule will not alter the number of older and lower-priced used cars sold by dealers to individual consumers for their personal use. Accordingly, we decline to

<sup>280</sup> *Id.*

<sup>281</sup> *Id.* at 108, n. 104.

<sup>282</sup> Industry representatives opposed a list of major systems which were given an inspection rating. See, e.g., NADA, S-739, T-740; Kay, American Car Rental Association (ACRA), T-717.

<sup>283</sup> Staff Report at 67-70.

<sup>284</sup> *Id.* at 93-94.

<sup>285</sup> *Id.* at 87-89, n. 81.

<sup>286</sup> *Id.* at 103-109.

<sup>287</sup> *Id.* at 109-130.

<sup>288</sup> *Id.* at 97-103.

<sup>289</sup> See Section IV.C. *infra*.

<sup>290</sup> NIADA proposed a pre-purchase inspection opportunity disclosure in its most recent post-record comment. NIADA, T-742, at 23-34, Appendix I.

<sup>291</sup> Although one participant contended that a substantially similar list failed to meet the specificity requirements enunciated in *Katharine Gibbs School v. FTC*, 612 F.2d 658, 662 (2nd Cir. 1979), the Commission believes that the list of deceptive practices meets the *Gibbs* standard. See NADA, T-741, at 31.

<sup>292</sup> 41 FR 1089 (1976).

<sup>293</sup> Staff Report at 397-399.

<sup>294</sup> *Id.* at 393, n. 6, 467-71.

<sup>295</sup> HX 164(A) at Table VI-2.



adopt any age or price restrictions in the definition of "vehicle."

The size and weight limitations in the definition of "vehicle" are designed so as to include light-duty trucks which are frequently used for personal activities, because the record reflects numerous consumer complaints concerning such vehicles.<sup>296</sup> Conversely, large trucks are excluded from the definition because of their specialized commercial nature and because buyers of large trucks generally appear to be more knowledgeable and sophisticated than the average used car buyer.<sup>297</sup> To distinguish between trucks used for commercial purposes and those used for personal transportation, the Commission has relied upon criteria developed by the Environmental Protection Agency for the classification of light-duty trucks.<sup>298</sup> The size and weight parameters set in the definition of "vehicle" also exclude large recreational vehicles from the Rule. There is insufficient evidence in the record to conclude that sales of these vehicles are characterized by the deceptive practices that the Rule is designed to prevent.

Finally, the definition of "vehicle" excludes motorcycles. While some witnesses suggested inclusion, there is little record evidence regarding deception by motorcycle dealers.<sup>299</sup>

#### Section 455.1(c)(2)—"Used Vehicle"

Section 455.1(c)(2) defines "used vehicle" in a manner consistent with the Commission's decision in *Peacock Buick, Inc.*<sup>300</sup> In *Peacock*, we concluded that the term "used car" should include "any vehicle driven more than the limited use necessary in moving or road testing a new vehicle prior to delivery to a consumer."<sup>301</sup>

An alternative definition of "used vehicle" suggested during the rulemaking proceeding turned on whether a car had been previously sold to a person who "purchased the vehicle in good faith" for a purpose other than resale or whether a car had been previously used in a variety of specified situations (e.g., as a rental or driver education car or as a demonstrator). Based on record comment<sup>302</sup> and our own expertise, we have concluded that this definition would be not only confusing to consumers and dealers but also difficult for the Commission to enforce. Accordingly, the Commission

has adopted the present definition in an effort both to clarify and to simplify the question of which vehicles are covered by the Rule.

In adopting this definition, the Commission specifically intends to include within the scope of the Rule cars identified on the record as "demonstrators".<sup>303</sup> Many states, for the purpose of titling laws, identify as "new" vehicles for which title has not passed to a purchaser despite extensive use of the vehicle as a demonstrator model. However, the record reflects that used cars sold as "demonstrators" are subject to dealer oral misrepresentations concerning overall quality of mechanical condition.<sup>304</sup> Therefore, the Commission has concluded that, notwithstanding the various state titling laws, there is substantial record justification and legal precedent for including demonstrators within the scope of the Rule.<sup>305</sup>

Comments in the rulemaking record suggested that, as previously worded,<sup>306</sup> the definition of "used vehicle" could have been construed to require inspection of automobiles sold for scrap by a junkyard to a consumer. These comments pointed out that the previous definition could also be construed to apply to the sale of a vehicle by a scrap yard to a scrap metal dealer.<sup>307</sup> Insofar as a vehicle is sold for its parts and not as an operating vehicle, there appears to be no need to provide consumers with the kind of information customarily used to evaluate an automobile as a means of personal transportation. Accordingly, the definition of "used vehicle" has been revised to exclude specifically those used cars sold only for salvage.

<sup>303</sup> "Demonstrators" include cars represented as "dealer demonstrators", "factory demonstrators", "executive demonstrators" and the like. *Id.* at 344.

<sup>304</sup> See, e.g., Towle, TR 577-83; Brewton, TR 2761-66.

<sup>305</sup> Our decision to include demonstrators in the definition of "used vehicle" does not in any way preempt state titling laws which identify demonstrator models as "new" cars. The Rule adopted here does not interfere with the classification of demonstrators for purposes of title; the Rule only requires that, if driven more than the limited number of miles needed to move or road test a vehicle, a car, when offered for sale, must display the Buyers Guide so as to provide consumers with mechanical condition and warranty disclosures. Moreover, it should be noted that the Rule does not conflict with other federal statutes. At most, some dealers may find that they will have to post the federally-mandated new car vehicle disclosure sticker (required under the Monroney Act, 15 U.S.C. 1231 et seq. (1972)), as well as the Buyers Guide, in those few instances (e.g., demonstrators) where a vehicle straddles the line between new and used.

<sup>306</sup> Staff Report, Appendix F at 1.

<sup>307</sup> See California Dismantlers Association, S-417.

#### Section 455.1(c)(3)—"Dealer"

This subsection defines a "dealer" in terms of the number and frequency of used car sales or offerings. The original rule proposed by the Commission defined a dealer as anyone who engaged in the business of offering for sale or selling used cars to the general public. Based on testimony in the record indicating the difficulty of interpreting the phrase "in the business of",<sup>308</sup> the Commission has concluded that a numerical standard would be easier to enforce and would provide better notice to the public concerning the applicability of the Rule. The record reflects that most states set the dividing line between a dealer and a casual seller of used cars at between three and six vehicles each year.<sup>309</sup> We have determined that five vehicles is the optimal cut-off point because any number less than that may unnecessarily include within the Rule occasional private sales of personal cars by their owners. Conversely, a number greater than five increases the risk that the Rule will be inapplicable to the so-called "curbstone" seller who, though buying and selling a substantial number of used cars per year (often from a residential location) may not formally be engaged in what would be termed the "business" of used car sales.<sup>310</sup>

The definition of "dealer" also excludes those who engage in the private sale of used cars, other than those who sell more than five cars per twelve-month period. Although a number of witnesses testified in favor of subjecting private sales to the requirements of the Rule,<sup>311</sup> the Commission does not find any basis to extend the provisions of the Rule to the private market. Indeed, the record discloses considerable evidence indicating that, in many instances, consumers receive more accurate information about the mechanical condition of used cars from private parties than from used car dealers.<sup>312</sup> The record also indicates that private parties generally do not offer warranties in connection with the sale of their used cars.<sup>313</sup> Therefore, the Commission finds that the record has not produced a sufficient incidence of deceptive sales practices in the private market to justify

<sup>308</sup> Staff Report at 405-407.

<sup>309</sup> *Id.* at 406.

<sup>310</sup> *Id.*

<sup>311</sup> *Id.* at 407.

<sup>312</sup> HX 164(A) at Tables IV-3, IV-4.

<sup>313</sup> See, e.g., HX 164(A) at Table IV-20 (97.6 percent of respondents reported receiving no warranty from the private seller).

<sup>296</sup> Staff Report at 400-402.

<sup>297</sup> *Id.* at 401.

<sup>298</sup> 41 FR 56316 (1976).

<sup>299</sup> Staff Report at 403.

<sup>300</sup> 86 FTC 1532 (1975).

<sup>301</sup> *Id.* at 1586.

<sup>302</sup> Staff Report at 404.



what would be a substantial expansion of the Rule's scope.

A considerable amount of discussion in the record focused on the question of whether the Rule should cover both franchise and independent used car dealers. Our review of the record in this regard convinces us that both types of used car dealers should be included within the scope of the Rule, since the frequency of dealer misrepresentation concerning warranty coverage and mechanical condition, as well as the severity of defects occurring soon after sale, is sufficiently great among both franchise and independent dealers.<sup>314</sup>

The definition of dealer specifically excludes banks, financial institutions, and a lessor selling leased vehicles to the vehicle's lessee, to a buyer procured by the vehicle's lessee, or to the lessee's employee. Thus, sales of leased vehicles by the vehicle's lessee, where the lessor retains no actual or constructive possession of the vehicle, are exempt, as are sales by lessors to a lessee of the vehicle or to the lessee's employees.

By the terms of this exemption, banks and financial institutions selling used cars forfeited as collateral on consumer loans also need not comply with the requirements of the Rule. Various banking representatives have requested that this exemption be extended to the affiliates and subsidiaries of banks and financial institutions.<sup>315</sup> The gravamen of the banks' arguments is that confusion will occur if the Rule does not explicitly permit banking affiliates and subsidiaries to conduct the same type of used car sales as the banks themselves may conduct without coming under the Rule. However, the Commission believes that the record does not include sufficient evidence to determine the extent to which existing banking regulations might permit financial institutions to engage in the retail sale of used cars through businesses operated by their affiliates and subsidiaries. Therefore, the Commission declines to extend the exemption for banks to include banking affiliates and subsidiaries.<sup>316</sup>

Some witnesses appearing in the proceeding argued in the rulemaking record that fleet sales of used cars are

not made in a retail sales environment.<sup>317</sup> However, the record demonstrates that many fleet operators sell significant numbers of used cars to individual consumers at retail.<sup>318</sup> As a result, the Commission has determined that fleet sales should remain within the coverage of the Rule. Fleet operators remain free to petition the Commission and present evidence indicating that an exemption would be appropriate.

The Commission intends, by the exemptions from the definition of "dealer", to remove from the scope of the Rule used car sales where the absence of a retail sales environment substantially diminishes the risk of the deceptive practices that we have found to be characteristic of used car sales presentations.

#### Section 455.1(c)(4)—"Consumer"

This subsection defines the class of persons intended to be the direct beneficiaries of the disclosures required by the Rule. The definition adopted here extends beyond the definition of "consumer" in the Magnuson-Moss Act<sup>319</sup> and in other product information disclosure statutes<sup>320</sup> to include any person who is not a used car dealer. The record fails to establish that business purchasers in general are more knowledgeable than other consumers with regard to mechanical condition and warranty information. The Commission, absent record evidence to the contrary, cannot presume that those purchasing used cars for other than personal use, particularly small businesses that may be owned and operated by individuals, are more sophisticated than individual private purchasers with respect to the warranty coverage that may be provided or the mechanical condition of used cars. Moreover, we believe that a definition of consumer which would require dealers to differentiate purchasers on the basis of knowledge or sophistication in the area of used cars would unfairly burden used car dealers. It is, in our judgment, extremely difficult to predict who is likely to shop at a particular used car lot or what will be the level of sophistication among the various persons who decide to buy. To require that the dealer estimate the sophistication of prospective purchasers would be an onerous task that would unnecessarily increase a dealer's risk of

violating the Rule. Therefore, in order to insure the necessary pre-sale availability of the information disclosures prescribed in the Rule without unduly burdening used car dealers, the Commission has adopted a more inclusive definition of "consumer".<sup>321</sup>

#### Sections 455.1(c) (5), (6), (7)—

#### "Warranty," "Implied Warranty," and "Service Contract"

These subsections define the terms "warranty", "implied warranty", and "service contract" in a manner which conforms to the definitions of those terms in the Magnuson-Moss Warranty Act.<sup>322</sup> Persons subject to this Trade Regulation Rule should be aware that the provisions of the Magnuson-Moss Warranty Act and the Commission's Rules interpreting that Act are fully applicable to any written warranty offered in connection with the sale of a used car.<sup>323</sup> Persons affected by this Rule should therefore consult the terms of the Magnuson-Moss Warranty Act and the Commission's Rules interpreting that Act for a clear explanation of the duties arising under that Act.

In the definition of "service contract", we intend to clarify our intent not to regulate service contracts in those States which classify such contracts as "repair insurance". In those States, service contracts are regulated by State insurance authorities and are therefore excluded from the Commission's jurisdiction by the McCarran-Ferguson Act.<sup>324</sup>

#### Section 455.1(c)(8)—"You"

The term "you" in the operative sections of the Rule refers to used car dealers. However, in the Used Car Buyers Guide prescribed by the Rule, "you" refers exclusively to the purchaser of a used car. This distinction is recognized in the definition set forth in this subsection. The Commission has adopted this distinction in an effort to

<sup>321</sup> Certain dealers may have clientele (e.g., large businesses that regularly purchase used vehicles) that clearly do not require the disclosures provided by the Rule. Although the Commission believes that these dealers are few in number, the Commission would consider the advisability of exempting such dealers from the Rule. Therefore, it would be appropriate for such dealers to file a petition for exemption with the Commission to enable the Commission to consider these specialized situations.

<sup>322</sup> 15 U.S.C. 2301(6)(B), (7), (8).

<sup>323</sup> See, e.g., 15 U.S.C. 2302-2308. See also 16 CFR Parts 700 (interpretations of Magnuson-Moss Warranty Act); 701 (disclosure of written consumer product warranty terms and conditions); 702 (presale availability of written warranty terms); and 703 (informal dispute settlement procedures).

<sup>324</sup> 15 U.S.C. 1011.

<sup>314</sup> Staff Report at 408-415.

<sup>315</sup> See Motion of Consumer Bankers Association, April 13, 1981; American Bankers Association, T-747. While we are mindful of the Federal Trade Commission Act's exclusion of banks from the Commission's jurisdiction under Section 5, the Commission believes that subsidiaries of financial institutions which are engaged in the business of selling used cars are covered by this Rule.

<sup>316</sup> The Commission notes that these issues may be more appropriately explored in the context of an exemption proceeding under Section 18(g) of the Federal Trade Commission Act.

<sup>317</sup> Staff Report at 415.

<sup>318</sup> *Id.* at 416.

<sup>319</sup> Under Sections 101 (1) and (3) of the Magnuson-Moss Warranty Act, 15 U.S.C. 2301 (1), (3), a "consumer" means a buyer of any product normally used for personal, family, or household purposes.

<sup>320</sup> E.g., Consumer Credit Protection Act, 15 U.S.C. 1602.



clarify and simplify the Used Car Buyers Guide.

**Section 455.1(c)(9)—“Defect”**

This section defines “defect” for the purposes of the requirements to disclose known defects set forth in Section 455.2(c) by reference to Section 455.6. That section of the Rule lists those major defects that must be disclosed if known to the dealer at the time of sale. By defining “defect” in this manner, the Commission intends to confine the scope of the known defect disclosure requirement in Section 455.2(c) of the Rule—i.e., that major problems that may occur in used cars and are material to the consumer’s purchasing decision should be disclosed, if known.<sup>325</sup>

**Section 455.2(a)—General Duties**

The Rule requires that before offering a used vehicle for sale to a consumer, dealers prepare and display the Used Car Buyers Guide on the side window of the vehicle. This placement should attract consumer attention without blocking the driver’s line of sight during a test drive or otherwise interfering with a dealer’s sales presentation.<sup>326</sup> The Rule also prescribes the precise size, type style, and format of the window sticker. In the Commission’s opinion, a uniform method of disclosure will alleviate confusion and possible deception which might result from inconsistent versions of the Used Car Buyers Guide. A standardized form will also minimize the risk to dealers who might otherwise post a disclosure form which does not satisfy the Rule’s requirements and who would thereby subject themselves to potential liability.

In order to evaluate the effectiveness of the Used Car Buyers Guide in communicating information to consumers concerning a used car, the Commission’s staff arranged for a series of consumer comprehension tests.<sup>327</sup> Based on the consumer testing results, the Commission has incorporated into the final Used Car Buyers Guide a

variety of technical changes in the graphic design of the Guide and the language used to convey the various information disclosures.

As explained below, the used Car Buyers Guide contains several information disclosures that the Commission believes to be necessary to prevent deception in the used car marketplace: (1) a warning concerning the importance of obtaining oral promises in writing; (2) a listing of the major systems of an automobile; and (3) a recommendation that consumers ask about a pre-purchase inspection opportunity.

The Used Car Buyers Guide encourages consumers to obtain in writing all promises made in connection with a use car sales presentation. This information is vital to consumers who may try to enforce a dealer’s promises only to find that promises not reduced to writing or included within the terms of the written sales contract are unenforceable. The spoken, promises warning, therefore, is designed to reduce dealers’ oral misrepresentations—and consumer reliance thereon—that the record demonstrates occur with frequency in the use car market.<sup>328</sup>

Second, the Used Car Buyer Guide lists the major systems in an automobile. The Commission has concluded that, in order to benefit from the warranty and defect disclosures required by the Rule, consumers need to be aware of the major automotive systems that they should evaluate before purchasing a used car. This is especially so in light of overwhelming record data indicating lack of consumer knowledge with regard to mechanical condition and warranty terms. Such lack of knowledge facilitates dealers’ misrepresentations regarding mechanical condition and warranty terms. By prominently displaying this information at the point of purchase, the Used Car Buyers Guide will provide consumers with a valuable frame of reference within which to evaluate dealer oral representations regarding mechanical condition and warranty coverage.

Third, the Used Car Buyer Guide advises consumers to ask the used car dealer about the possibility of pre-purchase inspections. Obtaining accurate third-party information concerning the mechanical condition of a used car at the time of sale is an accurate means for a consumer to determine whether the dealer has engaged in misrepresentation or failure

to disclose material information during the transaction.<sup>329</sup>

**Section 455.2(b)—Disclosure of Warranty Information**

In Section 109(b) of the Magnuson-Moss Act, Congress directed the Commission to initiate this proceeding to determine the need for rules concerning warranty practices in the used car market. As summarized in Section II.A.1 of this Statement of Basis and Purpose, the evidence received by the Commission during the rulemaking proceeding demonstrates that, because of deceptive dealer practices, consumers generally have little understanding of the extent of warranty coverage (or lack thereof) accompanying the purchase of a used car. Consumers therefore do not fully anticipate the repair costs that may accompany the ownership of a used car.<sup>330</sup> There is also substantial evidence that used car dealers frequently misrepresent or fail to disclose both the terms and conditions of warranty coverage offered to their customers.<sup>331</sup>

The Commission has determined that the least burdensome, most economical means of insuring the availability of adequate used car warranty information is to provide consumers with point-of-purchase disclosures. Accordingly, § 455.2 of the Rule imposes on used car dealers a duty to fill in and display a Used Car Buyers Guide on all used cars sold to consumers. If a warranty accompanies a car offered for sale, a dealer must, under the Rule, inform the buyer whether the warranty is full or limited, what percentage of the repair cost the dealer will pay, the systems covered by the warranty, and the duration of the warranty. The dealer must also indicate, by marking the correct disclosure on the Used Car Buyers Guide, if no warranty accompanies the car (i.e., the car is sold “as is”) or if State law “implied warranties” are the consumer’s only form of postsale protection.<sup>332</sup> Finally, the Rule requires each dealer to indicate the availability, if any, of a service contract covering repair costs. It is the Commission’s belief that this warranty information, when displayed on the Used Car Buyers Guide, should prevent the failures to disclose and the misrepresentations of warranty

<sup>325</sup> The list of defects chosen for disclosure consists of serious, latent defects involving factors of safety and/or expense. The Commission does not intend this definition to apply to any other actions regarding product defects that the Commission may take in other contexts.

<sup>326</sup> The Rule also permits the removal of the Used Car Buyers Guide for purposes of a test drive. See 455.2(a)(1).

<sup>327</sup> Market Facts Inc., “Exploratory Research Into Consumer Attitudes Toward the used Car Buyers Guide,” May 1981. The Commission also contracted for consumer testing for previous versions of the Rule. See Hollander Study (August 1980) and Public Communications center Study (December 1980). Attachments to Staff Memorandum to the Commission, Final Recommendations Concerning Used Car TRR, dated January 14, 1981.

<sup>328</sup> See Sections II.A.1, II.A.2 *supra*.

<sup>329</sup> See Section II.D.5 *supra*.

<sup>330</sup> Staff Report at 281-305.

<sup>331</sup> *Id.*

<sup>332</sup> A separate “Implied Warranties Only” disclosure is prescribed for use in those States that prohibit no warranty, “as is” sales and in those instances where a dealer chooses to sell a used car with neither an express warranty nor an “as is” disclaimer.



coverage documented in the record. It also should assist consumers in evaluating the long-term cost of used car ownership and thereby reduce the extensive consumer injury that results from unanticipated repair costs.

During the course of this proceeding, the Commission considered several different methods of disclosing the warranty information required by the Rule. Because of the many different warranties in the marketplace and the various methods of describing those warranties, the Commission has adopted a disclosure format that provides blank spaces for the dealer to use in describing the systems covered by a warranty and the duration of that warranty. However, notwithstanding the flexibility afforded by this method of warranty information disclosure, the use of shorthand phrases to describe the systems of a car (e.g., "drive train" to describe the engine, transmission, drive shaft, and differential) is prohibited by Section 455.2(b)(2)(ii) of the Rule. The record reflects that shorthand phrases, such as "drive train" or "power train", are used by dealers to connote parts of a car but that consumers do not understand such shorthand terms and are therefore not able to assess the value of a warranty offered on a "drive train."<sup>333</sup> Furthermore, such shorthand terms do not convey identical meaning throughout the used car industry.<sup>334</sup> Therefore, while the Commission wishes to provide flexibility to dealers in describing systems covered by warranties, we are requiring that dealers spell out which specific systems are covered by the warranty.

Some dealers may wish to provide warranty coverage for some systems of a used car and at the same time disclaim all other express or implied warranty coverage for the other systems of the car. In addition, some dealers may wish to list on the Buyers Guide the specific exclusions from the warranty coverage. Therefore, a dealer may use the space provided for the warranty disclosures to write in such disclaimers or exclusions.

#### *Section 455.2(c)—Major Known Defects Disclosure*

In Section 455.2(c), the Rule requires each used car dealer to disclose certain material defects known to the dealer at the time of sale. Specifically, each dealer must use the space provided on the Used Car Buyers Guide to inform purchasers of any of the defects set forth in Section 455.6 of the Rule, if known to the dealer at the time of sale. The Commission has adopted this

requirement as a direct response to the evidence in the record of widespread failure by dealers to disclose material facts concerning the mechanical condition of used cars.

Under Section 455.2(c) of the Rule, dealers need only disclose those defects listed in Section 455.6 that are known to them at the time of sale. The definition of "knowledge" as used in this Rule is set forth in the text of Section 455.2(c). However, to further illustrate the concept of "knowledge" for purposes of this Rule, the Commission has provided the following examples:

#### *Illustration 1*

At an auction, a used car dealer personally inspects a vehicle prior to purchase and discovers that the manual clutch slips. In this situation, the dealer has knowledge of a defect.

#### *Illustration 2*

At an auction, a used car dealer making a successful bid is given no opportunity to conduct a personal inspection of the vehicle purchased. Nevertheless, the auctioneer informs the dealer that the manual clutch of the vehicle slips. In this situation, the dealer has knowledge of a defect.

#### *Illustration 3*

A used car dealer employs an independent appraiser who road tests and visually inspects a vehicle purchased by a dealer and finds that the manual clutch slips. In this situation, the dealer has knowledge of a defect.

#### *Illustration 4*

A used car dealer employs mechanics who recondition the visual appearance of used cars offered for sale by the dealer. During the reconditioning of a vehicle, one of the dealer's mechanics notices visible leakage from the vehicle's fuel system. In this situation, the dealer will be deemed to have knowledge because the mechanic is an employee of the dealer. If the mechanic fails to report this information to the dealer, and the dealer fails to disclose the defect on the Buyers Guide, the dealer will be held liable for a Rule violation.

#### *Illustration 5*

A used car dealer performs no inspections on the cars he/she offers for sale. Nevertheless, the dealer sees a trail of radiator coolant left by a car recently driven onto the dealer's lot for purposes of resale. In this situation, the dealer has knowledge of a defect.

#### *Illustration 6*

A used car dealer performs no inspections on the cars he/she offers for sale. Nevertheless, a consumer trades in one used car for another and informs the dealer that the trade-in had required extensive corrective welding of its frame following a 40-mile-per-hour head-on collision with a large truck. In this situation, the dealer has knowledge of a defect.

#### *Illustration 7*

A used car dealer performs no inspections on the cars he/she offers for sale. Nevertheless, a consumer trades in one used car for another and informs the used car dealer that he/she thinks the ride is "rough." In this situation, the dealer does not have knowledge of a defect.

#### *Illustration 8*

A used car dealer is told by his mechanics that the right rear door is jammed and will not open. The dealer has no obligation to disclose this fact prior to sale because the condition of the doors is not among those defects that must be disclosed if known.

As with other statutes and rules administered by the Commission, the Commission's staff will provide informal advice interpreting the requirements of this subsection as well as other requirements of the Rule. Further clarification, if necessary, can be obtained from the Commission through an appropriate request for an advisory opinion filed under Part I of the Commission's Rules of Practice.

#### *Sections 455.2(d-f)—Additional Disclosures*

A number of the Rule's additional disclosure requirements are intended by the Commission to integrate the information provided by the Used Car Buyers Guide into the contract of sale between used car dealers and consumers and to memorialize on the form the details of each sales transaction so that the Buyers Guide may be used in the event of a dispute between buyer and seller.

#### *Sections 455.2(d)—Name and Address*

#### *Sections 455.2(e)—Make and Model*

Section 455.2(d) requires the name and address of the business or dealership selling the car to be listed on the Buyers Guide. By requiring that the seller identify in writing the person responsible for selling each used car and making the disclosures required by the Rule, the Commission intends to enhance the value of the Used Car

<sup>333</sup> Staff Report at 255, nn. 17, 19; 287, n. 85.

<sup>334</sup> *Id.* at 255-256, nn. 18, 19.



Buyers Guide as evidence in the event that disputes arise between buyers and sellers. The same purpose is served by the requirement in Section 455.2(e) that the dealer disclose on the Guide the make, model, model year, and vehicle identification number of each used car.

#### *Sections 455.2(f)—Complaints*

The rulemaking record indicates that dealers report difficulty in controlling the oral representations of salespeople and that salespeople often are not informed of material facts by the dealer.<sup>335</sup> If disputes arise over Buyers Guide disclosures, consumers must be able to identify the person responsible for handling consumer complaints. This is especially true in light of the fact that salespeople in the used car business are often transient.<sup>336</sup> As a result, Section 455.2(f) of the Rule requires each dealer to identify on the Buyers Guide the person to contact if a problem arises after sale.

#### *Section 455.3—Incorporation of the Used Car Buyers Guide Into Sales Contract*

To insure that the disclosures made on the Used Car Buyers Guide are available to the consumer, § 455.3(a) provides that each dealer must deliver to the purchaser at the time of sale a copy of the Used Car Buyers Guide containing all of the disclosures required by the Rule and reflecting the agreed-upon terms of warranty coverage. Section 455.2(b) provides that changes in the terms of warranty coverage must be reflected on the Buyers Guide.

Section 455.3(b) of the Rule further strengthens the importance of the Used Car Buyers Guide by requiring that the information on the window form be incorporated by reference into the sales contract for each used car sold. By integrating the Used Car Buyers Guide within the "four corners" of the used car sales contract, the Commission intends that the Used Car Buyers Guide become part of the written agreement between buyer and seller, so that, in the event of disputes between buyers and sellers, the information on the Used Car Buyers Guide would fall outside the exclusions of the parol evidence rule of contract law.

To inform consumers that the information on the Buyers Guide is a part of the sales contract and governs in the event that the sales contract contains contradictory terms, § 455.3(b) contains a disclosure that must be incorporated into all sales contracts. The Commission believes that the sales

contract disclosure will clarify for both consumers and dealers the necessity for the information on the Buyers Guide to accurately reflect the terms of the sale.

By requiring the addition of the specific clause into consumer sales contracts, the Commission intends to insure that the protections of the Rule are available to consumers. Thus, we intend that consumers who are injured by dealer deceptions concerning the disclosures on the Buyers Guide could bring breach of contract actions, since those disclosures are a part of the contract. In other trade regulation rules, we have also required that clauses reflecting particular consumer rights be added to consumer contracts.<sup>337</sup>

#### *Section 455.4—Contrary Statements*

As noted throughout this Statement of Basis and Purpose, the Commission has found that one of the principal consumer abuses in the used car market is oral misrepresentation concerning the warranty coverage that the dealer intends to provide after the time of sale and the mechanical condition of used cars. To enhance the effectiveness of the written disclosures in the Used Car Buyers Guide, the Commission has incorporated into Section 455.4 of the Rule an explicit prohibition of oral or written statements or other practices which alter or contradict the disclosures in the Used Car Buyers Guide. This provision is not intended to interfere with negotiations between dealers and consumers concerning the terms and conditions of warranty coverage. However, any final warranty terms agreed upon in such negotiations must be identified in the sales contract and summarized on the copy of the Used Car Buyers Guide given to the buyer.<sup>338</sup>

#### *Section 455.5—Spanish Languages Sales*

Earlier versions of Section 455.5 of the Rule had required that the Used Car Buyers Guide be in the language in which the sale is conducted. Such an open-ended requirement could have resulted in Buyers Guide translations of varying linguistic quality and accuracy unless the Commission were to publish official Buyers Guide translations in all of the several dozen languages used in the United States. The evidence in the record indicates that, besides English, Spanish is the language most frequently used during used car sales

transactions.<sup>339</sup> Therefore, the Commission has decided to limit the scope of Section 455.5 to Spanish translations of the Used Car Buyers Guide so as to insure that Spanish-speaking citizens may have access to the Used Car Buyers Guide information. Where the sale is conducted in Spanish, § 455.5 requires that a Spanish version of the Used Car Buyers Guide be posted and provided to the purchaser. For those dealers who sell to both English and Spanish-speaking consumers, both versions of the Buyers Guide may be posted.

#### *Section 455.6—Standards for Disclosure of Certain Known Major Defects*

Dealers are not required to conduct inspections; however, they are required as stated in § 455.2(c) to disclose certain material defects, if known at the time of sale. In this subsection, the Commission has defined those defects that must be disclosed in the event that a dealer acquires the requisite knowledge.

The definitions set forth in this section of the Rule establish standards by which persons with knowledge of the car being offered for sale may determine whether a particular automotive system demonstrates the existence of a defect.<sup>340</sup> A dealer should find that a system is defective if it fails to meet the standards established by the test procedures in this section, or any other test procedure which yields results that are the same as or substantially similar to those described in this section. Of course, defects must only be disclosed if the dealer knows of a defect as knowledge is defined in § 455.2(c).

The test methodology described in § 455.6 defines the standard of reference by which used car dealers are to determine the existence of defects. The defect criteria outlined in Subparts (a)-(h) are adapted from standards for determining which items are to be marked as defective or "Not OK" under the mandatory used car inspection procedure applicable to non-safety automotive systems in the state of Wisconsin; these criteria were also utilized in earlier rule proposals that would have included an inspection checklist. Substantial information in the rulemaking record supports the

<sup>337</sup> See, e.g., *Cooling-Off Period For Door-to-Door Sales*, 16 CFR 429; *Preservation of Consumers' Claims and Defenses (Holder-in-Due-Course)*, 16 CFR 433. See also *Arthur Murray Studio of Washington v. FTC*, 458 F.2d 622 (5th Cir. 1972); *All-State Industries, Inc. v. FTC*, 423 F.2d 423 (4th Cir.) cert. denied, 400 U.S. 828 (1970).

<sup>338</sup> Staff Report at 313, n. 122.

<sup>339</sup> *Id.* at 545, nn. 15 and 16.

<sup>340</sup> Industry comments have objected that the term "defect" was not adequately defined in this proceeding. See, e.g., NIADA, S-739 at 69; NADA, S-738 at 186. However, throughout this proceeding, the discussion of defect disclosure centered on the two existent inspection protocols (DOT and Wisconsin discussed herein).

<sup>335</sup> *Id.* at 103-109, nn. 102-106.

<sup>336</sup> See, e.g., Warwick, TR 5380.



adequacy of the list of non-safety items.<sup>341</sup>

The inspection procedures in Subparts (j)-(n) are based on test methods prescribed by the Department of Transportation for automotive safety systems. Evidence in the record demonstrates that these DOT specifications are widely accepted as performance standards.<sup>342</sup> The Commission had added exhaust system leakage (Subpart (i)) to the list of defects because of record evidence demonstrating the relationship of the exhaust system to vehicle safety and the general inability of purchasers to recognize defects in this system of a car.<sup>343</sup>

Although some witnesses who testified during the proceeding complained that these criteria are too vague,<sup>344</sup> we believe that the record demonstrates that the list is sufficiently concrete to enable those who may have knowledge of defects to decide whether a particular item satisfies the criteria.<sup>345</sup> For example, dealers in Wisconsin who had used the list for several years testified that they had no difficulty in making the decisions required under the Wisconsin disclosure law.<sup>346</sup>

Finally, the Rule provides that, when deciding whether a defect is present, dealers are not to use a sliding scale which sets lower standards for vehicles beyond a certain age or mileage. The definitions for determining whether a specific defect exists set a standard for failure, not for gradations of acceptability. Consequently, the age of the vehicle is irrelevant to the assessment of whether the car satisfies the defect standard.

#### Section 455.7—Exemptions

The standards for state exemptions set forth in § 455.7(a) conform to the congressional directive in the FTC Improvements Act of 1980 concerning state exemptions from the proposed Federal Industry Trade Regulation Rule. The Commission will assess requests for exemptions from state agencies by analyzing the state requirement in comparison to the Rule. The

Commission here offers no opinion as to whether there are any state or local regulations currently in effect which do provide a level of protection as great as or greater than that provided by the Rule. Instead, as set forth in § 455.7(b), the Commission will determine the appropriate interrelationship between the Rule and state regulation on a case-by-case basis in the context of an exemption proceeding conducted pursuant to § 1.16 of the Commission's Rules of Practice. Appropriate petitions for exemption made by state governments will be evaluated to determine the overall level of protection to consumers and whether the state scheme that offers protection as great as, or greater than, the Rule is administered and enforced effectively. Should a jurisdiction be granted an exemption under this section, the Commission intends to forego enforcement of the Rule in that jurisdiction while the exemption is in effect.

#### Section 455.8—Severability

By this section, the Commission expresses its intention that each provision of the Rule is separate and severable. If one or more parts are found to be invalid, the other portions of the Rule will continue in effect.

#### IV. Alternatives Considered

During the course of this proceeding, both the Commission and staff have considered several alternatives to the current Rule. Each of the variations has involved warranty disclosure, including an explanation of "as is" sales, a list of major mechanical systems, a disclosure of known defects, and a spoken promises warning. The record contains ample evidence to support each of these features in any rule designed to address the problems of oral misrepresentation of warranty terms and condition of cars offered for sale which result in consumer injury in the form of unanticipated repair costs.<sup>347</sup>

The options considered differ principally in how they treat the issues of inspection and the disclosure of additional information on the condition of the cars. Those alternatives were:

1. Mandatory Inspection.
2. Optional Inspection.
3. Mandatory Third-Party Inspection.
4. Cooling-off Period.
5. Disclosure of Prior Use.
6. Disclosure of Odometer Accuracy.
7. Disclosure of Estimated Repair Costs.
8. Disclosure of Prior Repairs.

<sup>347</sup> For this reason the Commission rejected the alternative of issuing no rule.

#### 9. Disclosure of Flooded or Wrecked Vehicles.

**A. Mandatory Inspection.** The Commission considered and rejected a staff recommendation that would have required dealers to inspect all used cars and disclose the results of the inspection.<sup>348</sup> The disclosure would have involved a checklist in which each major mechanical system was to be checked "OK" or "Not OK", together with an indication of the reason for any "Not OK" checks. Dealers would have been required to follow a specified inspection protocol when performing inspections. The staff felt that this approach would directly address the problem of dealer misrepresentation of mechanical condition. Under this alternative, buyers would have had a specified number of days to report any problems with "OK" systems.

Industry members expressed concern about the increased post-sale liability that would be incurred by dealers who checked systems "OK", since during the period to report problems dealers would be responsible for repairing any defects in systems marked "OK".<sup>349</sup> In addition, because "OK" checks in effect created warranties under state law, some industry members questioned whether a rule that required dealers to inspect and check "OK" where appropriate would contravene the intent of Congress in § 102(b)(2) of the Magnuson-Moss Warranty Act, which explicitly prohibits the Commission from mandating warranties.<sup>350</sup>

There was also concern by dealers and dealer organizations that dealers' cost of operation would increase under a mandatory plan;<sup>351</sup> that is, that dealers would have to pay for the inspection of each car offered for sale and would pass those costs on to the buyer in the form of higher selling prices for cars.<sup>352</sup> Such a result would not have been dictated by market forces but would have been uniformly required for every used car as a result of government intrusion into the marketplace.

<sup>348</sup> This determination occurred at the October 11, 1979 meeting.

<sup>349</sup> See NIADA, S-739, at 44, 88, 101; Wilkerson, S-588; Gadwin, S-624; Suvan, S-489; Roland, S-553. See also, NIADA, S-739 at 88; Murphy, S-706 at 1; Knauf, S-410 at 1.

<sup>350</sup> NADA, S-738 at 62-77; AAA, S-633 at 2; NIADA, S-739; Hart, S-562; Delaware Valley Auto Dealers Association, S-461; Texas Independent Automobile Dealers Association, S-1006; Virginia Independent Automobile Dealers Association, S-1023.

<sup>351</sup> NADA, S-738; NIADA, S-739; Texas Independent Automobile Dealers Association, S-1006; Patnode, S-999; Bryson, S-376; Suvan, S-489.

<sup>352</sup> Virginia Independent Automobile Dealers Association, S-1023; Smith, S-970; Mitchell, S-509; Carter, S-615; Hawley, S-980.

<sup>341</sup> Staff Report at 153-154, n. 194.

<sup>342</sup> *Id.* at 144-152.

<sup>343</sup> *Id.* at 152-153.

<sup>344</sup> NADA, T-740; Wilcox, dealer organization, T-700; Marsh, dealer organization, T-740; Unfung, dealer, TR 1662-63, 1669; Clark, dealer, TR 1757; Sapp, dealer organization, C-46 at 3.

<sup>345</sup> Staff Report at 147-159. In addition, the standard set forth in this Rule is a "failed to meet" standard and alleviates the concern of various parties that consumer confusion might be created by the varying conditions (from excellent to minimally "OK") that could accompany a "pass" (i.e., "OK") standard.

<sup>346</sup> *Id.* at 157-159, nn. 203-205.



The issue of the costs of inspection was addressed extensively in the record. The staff believed that because a majority of dealers currently inspect cars, inspection costs for most dealers would not increase.<sup>353</sup> Furthermore, for those dealers who did not currently inspect, staff projected a cost range of only \$15-30 per car.<sup>354</sup>

While the mandatory inspection proposal was favored by many consumer organizations,<sup>355</sup> the Commission, in light of the aforementioned concerns, determined that this remedial approach was not feasible. The Commission believed that other effective remedial alternatives were available and would be less burdensome.

**B. Optional Inspection.** Under the optional inspection alternative, dealers would have been required to post a window sticker with a list of mechanical systems as under mandatory inspection. However, the checklist would have had an additional column, "No Rating" ("We Don't Know").<sup>356</sup> The dealer would have been under no obligation to inspect. If a dealer chose not to inspect, the mechanical systems could simply be checked "No Rating." Additionally, if the dealer inspected and found a system not to be defective, but did not want to assume liability for its condition, the dealer could also check "No Rating." This alternative would have given the dealer the flexibility to determine whether or not to inspect as well as whether or not to assume responsibility for the condition of non-defective systems. If, however, the dealer did inspect or otherwise discovered specified systems to be defective, he or she would have had to disclose such systems as "Not OK" and delineate what the particular problem was.

The Commission ultimately rejected an optional inspection approach because of several concerns expressed

by consumer groups and industry representatives.<sup>357</sup> First, some groups expressed concern that an optional inspection rule would detract from warranty disclosures, especially those relating to "as is" sales, by focusing the buyer's attention on the condition of individual components at the time of sale rather than on the dealer's continuing responsibility—if any—for post-sale repairs.<sup>358</sup> Others were concerned that a simple "OK"/"Not OK"/"No Rating" evaluation system might not clearly and accurately communicate a car's individual condition and thus could lead to consumer confusion and, perhaps, even deception.<sup>359</sup> Some believed that if dealers of older and cheaper used cars chose not to inspect, checked "no rating" and sold "as is" with no warranty, the consumer could conceivably be harmed by an optional inspection rule, since the "no rating" option could undermine a consumer's attempt through litigation to enforce oral dealer promises about condition.<sup>360</sup>

The question was also raised as to whether the optional inspection approach would provide consumers with useful information. A number of commentators believed that dealers, particularly, in "as is" sales, would simply mark all systems "No Rating".<sup>361</sup>

In addition, there was some concern about the cost of an optional inspection approach. Dealers and dealer organizations claimed that the cost of inspection, even on an optional basis, would be high, and that consumers would ultimately shoulder those costs through higher used car prices.<sup>362</sup>

In light of all of the problems raised concerning the optional inspection rule, the Commission has decided to fashion

in its place a remedy that provides effective relief from the deceptions documented in the record in a manner less intrusive than the optional inspection rule.

**C. Mandatory Third-Party Inspection Opportunity.** The staff considered, but did not recommend, a mandatory pre-sale third-party inspection opportunity for consumers.<sup>363</sup> Under this alternative, dealers would have been required to allow consumers to take the car off the lot for purposes of obtaining a third-party inspection; consumers would have been assured the availability of independent diagnostic analysis. However, record comments suggested such a rule would result in increased costs, including increased insurance, personnel time and the possible need to reinspect certain systems. Consumers would thus face the direct costs of inspection, as well as the likely pass-through by the dealer of his or her costs. Because of the potential costs involved in a mandatory, third-party inspection opportunity, the staff did not recommend that the Commission include such a requirement in the final rule.

**D. Cooling-Off Period.** Some consumer organizations recommended that a cooling-off period be added to the optional inspection rule.<sup>364</sup> The cooling-off period would only apply to vehicles that had not been inspected. Its purpose was to give purchasers of vehicles that had not been inspected an opportunity to discover defects on their own and to give dealers an incentive to inspect in order to avoid the cooling-off period. The staff rejected the cooling-off period alternative because it appeared to have significant costs and uncertain benefits.<sup>365</sup> The costs to dealers included those arising from the danger of theft, the consumer's use of the vehicle as a free rental car or for "joy-riding", uncertainties in financing arrangements (decreasing the rate of inventory turnover or increasing the dealer's capital requirements), increases in insurance rates, repeated detailing expenses and repeated inspection expenses. If dealers attempted to recover these costs through a user fee to consumers who returned cars, the effectiveness of the cooling-off period would have been reduced since consumers would have little economic incentive to rescind. Thus, the staff believed that other alternatives would be more effective, less costly, and less

<sup>353</sup> See Staff Report at 213-241.

<sup>354</sup> However, one dealer association conducted a survey of mechanics which produced a cost of inspection ranging from \$25 to \$250 per car. See post-record comment of NIADA, T-742 at Appendix III. See generally NIADA, S-739; Whetman, S-790; Texas Independent Automobile Dealers Association, S-993.

<sup>355</sup> See AOAC, T-708; CALPIRG, T-727 at 1; Center for Auto Safety, T-733; NCLC, T-833; Newton, T-316; Pfeffer, T-371; Ranstrom, T-508; Carter, T-598.

<sup>356</sup> In the version of the optional inspection rule published in the August 7, 1980 Federal Register, the column indicating that a car had not been inspected and that the dealer was making no promises about condition was called "We Don't Know." Technical comments suggested that "We Don't Know" carried pejorative connotations. Therefore, staff recommended that that column be labeled "No Rating." See staff Memorandum to the Commission, Final Recommendations concerning Used Car TRR dated January 14, 1981, at 17-18.

<sup>357</sup> The Commission tentatively adopted the optional inspection approach at the May 16, 1980 meeting.

<sup>358</sup> Many commentators stated that buyers would not understand that an "OK" check identified a condition at the time of sale rather than a warranty of future performance. See AOAC, T-708 (Appendices B-6, B-9, B-12); CALPIRG, T-733 at 29; CAS, T-733; NCLC, T-833 at 14-15; NADA, T-740 at 28; NIADA, T-742 at 21-22.

<sup>359</sup> See AOAC, T-708; CALPIRG, T-727 at 8-12, 34; CAS, T-733; Cuellar, T-238; Strickland, T-678; NADA, T-740; NADA, T-740 at 18-19, 33; NIADA, T-742 at 14-15, 25.

<sup>360</sup> AOAC, T-708 at 16 (Appendix B-6); CALPIRG, T-727 at 1, 31-32; Kaufman, T-150; Cuellar, T-238; Hartman, T-287; NADA, T-740 at 31; Stokes, T-567.

<sup>361</sup> AOAC, T-708 at 7-15A; CALPIRG, T-727 at 15-18; CAS, T-733; NADA, T-740 at 21; Merrill-Wahus, T-185; Carter, T-598.

<sup>362</sup> Berrier, T-699(b); NADA, T-740 at 22; NIADA, T-742 at 5, 9. The dealer arguments concerning costs were counterbalanced against the evidence that in Wisconsin, after implementation of a mandatory inspection law, the costs of inspections to more than two-thirds of the dealers did not rise. See, e.g., HX 164(A) at V-8.

<sup>363</sup> See Staff Report at 87-92, nn. 80-83; 41 FR 1091-1092 (1976).

<sup>364</sup> CALPIRG, T-727 at 2; CAS, T-733. Other witnesses suggested varying time periods. Staff Report at 183, nn. 245-248.

<sup>365</sup> Staff Report at 185-190.



intrusive than the cooling-off period. The Commission did not consider a cooling-off provision a viable option, and therefore the issue of a cooling-off period remedy was not discussed by the Commission as an alternative to, nor in conjunction with, the inspection options.

**E. Disclosure of Prior Use.** The Final Staff Report recommended that the Commission include a disclosure of a car's prior use on the Buyers Guide.<sup>366</sup> "Prior use" refers to the manner in which a car was used prior to being offered for sale on the used car lot—e.g., as a taxi, rental car, police car, etc. In the Final Staff Report, the staff proposed that each of these "prior uses" be listed on a window sticker and that the dealer check an appropriate box.

At the October 11, 1979 meeting, the Commission rejected the disclosure of prior use because it believed that staff had failed to demonstrate that consumers were injured when prior use was not disclosed. The Commission stated that, while it appeared prior use was material to consumers, the record did not sufficiently demonstrate that disclosure of prior use provided consumers with an accurate indication of a car's mechanical condition.<sup>367</sup>

**F. Disclosure of Odometer Accuracy.** The Final Staff Report recommended that the Commission include mileage disclosure on the Buyers Guide,<sup>368</sup> even though it duplicated federal law.<sup>369</sup> Staff's arguments focused on the fact that, under the law, disclosure need not be made until the time of sale, which often occurs in a pressure situation with the consumer confronted by a number of forms. Therefore, consumers did not always read the odometer disclosure form. Staff also stated that the repeated disclosure on the Buyers Guide was minimally burdensome since the dealer simply had to copy readings from the odometer disclosure form.

The Commission disagreed. On October 11, 1979, it rejected staff's proposal primarily because it duplicated federal law and therefore appeared unnecessary.<sup>370</sup>

**G. Disclosure of Estimated Repair Cost.** In the Final Staff Report, staff proposed that dealers be required to disclose estimated costs of repair for

items checked "Not OK."<sup>371</sup> Staff believed that such a disclosure would enable dealers to reveal to mechanically unsophisticated consumers the true impact of the "Not OK" check. However, at the May 16, 1980 meeting, the Commission rejected the staff's recommendation. The Commission decided that a disclosure of the estimated range of cost would not provide meaningful repair information to consumers, since mechanics could not be specific about repairs for problems not fully diagnosed. The Commission was also concerned about the cost of ascertaining what precise repairs might be necessary.<sup>372</sup>

**H. Disclosure of Prior Repairs.** The initial rulemaking notice on January 8, 1976 included a proposed rule provision which would have required a description of repair work performed by used car dealers.<sup>373</sup> Staff, however, recommended dropping the proposed disclosure of prior repairs because there was no record evidence to support a finding that prior repairs are reliable indicators of current mechanical condition. Moreover, since consumers consider prior repairs to be a negative attribute, disclosure of prior repairs would have reduced dealer incentive to make such repairs. Finally, the record indicates that most consumers could not make effective use of repair information because they lack the technical expertise to distinguish repairs which might indicate more serious problems from repairs which actually improve the value of the vehicle. The Commission agreed with staff's recommendation to eliminate the proposed prior repair disclosure.<sup>374</sup>

**I. Disclosure of Flooded or Wrecked Vehicles.** The Final Staff Report recommended that the Commission include a disclosure that vehicles had been flooded or wrecked and established as an insurance "total loss".<sup>375</sup> In staff's view, the record established that such vehicles are not desired by consumers and are often mechanically inferior to vehicles which have not been wrecked or flooded. However, the Commission decided at the May 16, 1980 meeting that, because insurance companies base their decision

as to whether a car is totalled on the market value of the car, and not exclusively upon the amount of damage, the information provided could result either in unjustifiable depreciation in the value of a car or in a failure to disclose severe damage.<sup>376</sup> The provision for disclosure of the fact that a vehicle had been flooded or wrecked was therefore deleted from the rule.

#### V. Economic Impact on Small Businesses and Consumers

**A. Analysis of the Used Car Rule—Projected Benefits, Costs, and Effects.** As set forth earlier, the Rule comprises six components—three affirmative disclosure requirements relating to the specific vehicle (a disclosure of warranty information, of the meaning of an "As Is" sale, and of certain major known defects) and three other general information disclosures (a spoken promises warning, a major systems list, and a pre-purchase inspection notice). Each element is designed to remedy particular abuses reflected in the rulemaking record and thus, to a certain extent, is segregable from the whole for the purposes of analyzing projected benefits, costs and effects of the Rule.

However, certain of the projected benefits and costs may not be readily segregable, and therefore are more appropriately attributable to the Rule as a whole, rather than to any particular element of the Rule. For example, the Commission expects that the disclosures required by the Rule will reduce dealer misrepresentations, consumer reliance on such misrepresentations, and the consumer injury that occurs from paying unexpected repair costs and prices that fail to reflect the true condition of the vehicle. Such benefits are likely to arise from the impact on the market of the entire Rule, rather than from the impact of any one particular element.

The direct cost of providing used car information required under the Rule is minimal. The dealer need only obtain the Buyers Guide forms, and complete them with readily available information. The Rule would not prevent any car, with or without any warranty, in any condition from being sold. Seen from this perspective, the costs of the Used Car Rule, insofar as it functions as a disclosure device, are minimal.

We now proceed to an analysis of each component of the Rule individually.

#### 1. Disclosure of Availability and Scope of Warranty Coverage. The Rule

<sup>366</sup> See generally Jones, Alabama Automotive Dismantlers & Recyclers Association, S-202; Vorhof, Foreign Auto Salvage, S-288.

<sup>367</sup> *Id.* at 337-383.

<sup>368</sup> This point was raised by several commentators. NADA, S-738; American Car Rental Association, S-738; Consumer Bankers Association, S-737.

<sup>369</sup> Staff Report at 384-391.

<sup>370</sup> Motor Vehicle Cost Savings Act, 15 U.S.C. 1988(a)(1). Further, the seller must disclose that the actual mileage is "unknown" if he or she knows the reading is different from the vehicle's true mileage. 15 U.S.C. 1988(a)(2).

<sup>371</sup> NADA, S-738 at 198, 200; Tooraen, S-517 at 2; Sosa, S-579 at 1; Tongren, S-525 at 4.

<sup>372</sup> Staff Report at 167-68.

<sup>373</sup> See Rork, S-16 at 1; Connors, S-633 at 2; Glahedge, S-678 at 2.

<sup>374</sup> 41 FR 1089 (1976).

<sup>375</sup> This occurred at the October 11, 1979 meeting.

<sup>376</sup> Staff Report at 160-164. Cars that are subjected to flood damage in one state are often shipped out of state for sale and sold without informing the consumer of damage incurred. In the case of "wrecked" vehicles, insurance companies consider the car a total loss when estimated repairs exceed the vehicle's market value.



addresses dealer practices that deceive consumers and create consumer confusion with respect to warranty coverage and service contract terms.<sup>377</sup> The record clearly demonstrates that dealers orally misrepresent the terms of written warranties and service contracts.<sup>378</sup> In some cases, salespersons deceptively refer to "good warranty" or "full guarantee" when the warranty coverage offered is severely limited.<sup>379</sup> The allocation of repair responsibility and the duration of the warranty are often overstated or not clarified.<sup>380</sup> In addition, warranty information may not be available for use in the consumer's purchasing decision since warranty terms are often not made known to consumers until after they have decided to purchase.<sup>381</sup> For example, results from one study showed that warranty documents failed to describe the items that the dealer would repair in 24 percent of the cases; the dealer's share of the repair cost was not disclosed 19 percent of the time.<sup>382</sup> Another study found discrepancies between the verbal and written warranty in 34 percent of the cases where test shoppers actually saw the warranty.<sup>383</sup>

The warranty disclosure adopted by the Commission addresses these problems. The shopper will be able to readily ascertain which mechanical systems are warranted, for how long, and how costs of repair will be allocated between the buyer and the used car dealer.

a. *Benefits.* The Rule is designed to provide consumers with pre-sale disclosures of material information regarding warranties at a time prior to the closing of the sales contract. The Commission believes that clear and accurate disclosures of post-sale repair responsibilities at the point of purchase will provide an effective remedy for the consumer injury resulting from dealer misrepresentations of warranty coverage.

If consumers have accurate knowledge of what the dealer will pay in case the consumer encounters problems after the sale, unanticipated repair costs and the consumer injury that results therefrom should be reduced. With warranty information available at the point of sale, the

consumer will be better able to make accurate assessments of the probable ownership costs (purchase price plus repair costs) of a car prior to making a purchase decision.<sup>384</sup>

The window sticker will provide consumers with an additional source of information on warranty coverage which they can use as a check against which to measure any oral representations by the dealer about the warranty. With the disclosure on the window sticker, consumers can compare the terms of the written warranty document. Thus, the Commission believes dealers will be less likely to misrepresent warranty coverage. At the same time, consumer reliance on any oral warranty promises should be reduced.

Disclosure of warranty terms also provides another sort of benefit. The terms of the warranty will frequently provide information to the consumer about the condition of the car, since consumers are likely to use the strength of the car's warranty as a signal indicating the dealer's evaluation of the car's mechanical condition. For example, a strong warranty may signal the consumer that the dealer has confidence in the condition of the car. On the other hand, a warranty that does not cover the brake system may lead a shopper to question the condition of the brakes.<sup>385</sup> In general, the lack of a strong warranty may serve to arouse buyer suspicions concerning mechanical condition and may encourage some buyers to seek third-party inspections.

Warranty disclosures made early in the transaction thus will make it possible for consumers to use warranty information to weigh the relative importance of the warranty coverage, the condition of the car, and the price they are willing to pay for it. However, to be used effectively, such disclosures must be made available at a time prior to the signing of the sales contract. If warranty information is not available until late in the transaction, the buyer has little opportunity to utilize the information which the terms of the warranty convey. There is little chance for the final agreement between buyer and seller to reflect the buyer's desire for specific warranty terms or the relative value he or she attaches to

warranty coverage, condition of car, and price.

We believe that the availability of warranty information early in the bargaining process should increase consumers' ability to bargain for the terms they desire. This should intensify the pressure on dealers to compete on the basis of the terms of the warranty whenever (and to the extent that) consumers are willing to pay for them. With more equal sharing of information between buyers and sellers, market forces will be able to work more efficiently to determine the nature of the warranty terms offered.

Of course, to be useful to consumers, the disclosure information must be easily understandable. Tests of the comprehensibility of the disclosures on the window stickers have shown them to be remarkably clear. Focus group tests by Market Facts, Inc., testing two versions of a form very similar to the one required by the Rule, found that respondents could use the Buyers Guide to determine whether the car had a warranty, what systems were covered, and the length of the warranty.<sup>386</sup> This study suggests that the Buyers Guide will increase consumer certainty as to the warranty coverage offered on a car.

An additional benefit to both buyers and sellers may be reduced litigation costs. Disclosure of warranty terms will provide clear written information about the buyer's rights; a clearer written contract is likely to reduce the impact of oral promises. The Commission thus expects that sellers may be more willing to settle disputes and buyers may be less likely to bring actions for unenforceable oral promises. This should result in a more efficient dispute settlement system.

The Commission believes that clear and conspicuous disclosures of information concerning the availability and scope of warranty coverage is likely to have substantial benefits, given the

<sup>386</sup> As directed by the Commission, this study was conducted in May 1981, under a staff contract in order to test whether the Buyers Guide, as revised in accordance with the Rule changes approved by the Commission on April 14, 1981, would communicate information to consumers.

Previously, the staff had contracted for two studies which tested earlier versions of the Buyers Guide developed during the Commission's consideration of an optional inspection rule. Focus group testing conducted by Hollander & Associates in August 1980, indicated some confusion with parts of the form, including the relationship between the mechanical condition checklist and the warranty disclosures. After redesigning the Buyers Guide, the staff contracted with the Public Communications Center in December 1980, to perform mail intercept and focus group tests. In those tests, respondents understood the warranty information provided by the form and found the meaning of "as is" to be very clear. PCC Study, Tables 2, 3, 4, 8, and 17.

<sup>377</sup> Staff Report at 280-90.

<sup>378</sup> *Id.* at 303-05.

<sup>379</sup> Presiding Officer's Report at 35.

<sup>380</sup> Staff Report at 284. The SRL Study demonstrates a high percentage of confusion over the dealer's share of repair costs. HX 180(A) at Appendix C, Question 23 A and B.

<sup>381</sup> Staff Report at 282.

<sup>382</sup> SRL Study, HX 160(A), Appendix C, Questions 23A, 23B.

<sup>383</sup> CALPIRG, HX 82 at 17.

<sup>384</sup> The record indicates that some buyers do bargain over warranty coverage. Although the magnitude of such bargaining efforts is difficult to determine, the Commission expects it to increase when buyers have more accurate information about the warranty being offered. Staff Report at 301.

<sup>385</sup> The list of major systems which is set forth on the Buyers Guide should provide the shopper with a context in which to evaluate the warranty coverage offered on any given car. See section V.A.4.c. *infra*.



misrepresentations and resulting consumer injury demonstrated in the market. We expect reductions in consumer reliance on such oral (and generally unenforceable) warranty promises and in unanticipated repair costs for consumers.

b. *Costs.* The Commission believes that the direct costs of warranty disclosure will consist of the printing, filling out and posting of the Buyers Guide. The Rule itself requires no change in the offering or scope of warranties. Dealers may still sell "as is" or offer a warranty. The Rule only requires that dealers conspicuously disclose the terms of a warranty, if offered, or the fact that the sale is "as is." Thus, the direct costs of the Rule will be minimal.

Some indirect costs may result from warranty disclosure. As warranty disclosures become common, competitive pressures may encourage dealers to increase warranty coverage. In that event, dealers may incur additional post-sale repair costs. Presumably, dealers will not offer warranties with more protection than that for which consumers are willing to pay. Thus, to the extent warranty coverage and therefore post-sale repair costs do increase, such costs will be imposed by consumer demand in the market not by the Rule.

In our judgment, the projected costs of these disclosures will impose minimal burdens on the industry while significant benefits will accrue to consumers. We therefore believe that the warranty disclosure requirements will be cost-effective.

2. "As Is" Sales. The Rule would require dealers to check an "as is" box on the Buyers Guide when they sell a vehicle with no warranty. Next to the box will be a simple statement explaining the meaning of an "as is" sale.

The record reveals a great deal of confusion on the part of consumers with respect to the meaning of "as is" sales:

Undoubtedly the most needed disclosure proposed in this proceeding involves "As Is" sale . . . The record is replete with testimony as to the lack of understanding on the part of consumers of the meaning and effect of this term in a sales contract.<sup>387</sup>

Data from three studies on the record show that at least 25%, and perhaps as many as 59%, of buyers cannot correctly describe an "as is" sale.<sup>388</sup>

In addition, the record indicates that the "as is" nature of a transaction is not usually disclosed, if it is disclosed at all,

until the sale is about to be made.<sup>389</sup> Some "as is" disclosures are couched in complex legalistic terms.<sup>390</sup> In addition, some dealers will make oral promises to repair problems that arise after sale, even though the sale is made on an "as is" basis.<sup>391</sup> Many buyers, even when aware that a sale is "as is", still believe the seller has a legal responsibility to make post-sale repairs.<sup>392</sup>

a. *Benefits.* The Commission believes the "as is" disclosure will assist in reducing the documented widespread ignorance and misunderstandings with respect to "as is" sales.

The benefits of a clear "as is" disclosure are similar to those benefits resulting from warranty disclosure. Because the disclosure will set out the significance of an "as is" sale, we expect that it will reduce consumer reliance on oral promises to repair problems that arise after sale. We also expect a concomitant reduction in dealer oral misrepresentations that a warranty is provided since consumers will be able to use the disclosures on the Buyers Guide to evaluate contradictory dealer oral promises. A related benefit of the "as is" disclosure is the disincentive it provides for dealers to represent that a particular component is in good condition or that the car in general is in good condition in light of the lack of warranty coverage.

Tests of the comprehensibility of the "as is" disclosure have indicated that consumers understand the disclosure and will use it in making purchase decisions.<sup>393</sup>

It is possible that some dealers may decide to offer a limited warranty on one or more non-essential systems rather than sell the car "as is" and check the "as is" box on the Buyers Guide. However, we would not be concerned if this should occur. As long as the disclosures on the Buyers Guide accurately reflect the warranty coverage, the consumer who receives such a limited warranty will be able to assess the value of the warranty in determining whether to purchase the car. Any detriment to the consumer in receiving such a limited warranty will be diminished by the fact that the Buyers Guide disclosures will inform the consumer of the limited scope of the warranty by placing it within a context

of systems that could be covered by a warranty.<sup>394</sup>

b. *Cost.* The direct costs associated with "as is" disclosure are minimal. The check box and definition will be printed on the Buyers Guide adjacent to the warranty disclosure section. The dealer must merely check the box if the car is sold on an "as is" basis. Thus, essentially no costs will be imposed beyond those already incurred in posting the window sticker.

3. *Disclosure of Major Known Defects.* The Rule requires dealers to disclose certain major known defects on the cars they offer for sale. The Rule limits those defects that must be disclosed, if known, and states that a dealer has knowledge if "you or your agent or employer have obtained facts or information about the condition of a vehicle (e.g., through an inspection, from a previous owner, from the salesperson at an auction) which would lead a reasonable person in similar circumstances to believe that the car contained one or more defects as defined in § 455.6 of this Rule."<sup>395</sup>

Dealers acquire a great deal of information regarding the mechanical condition of vehicles they sell. They obtain this knowledge of defects from various sources, including inspections both before and after acquisition (through trade-ins, auctions and private purchases). After purchase, dealers are apt to discover additional defects during further inspections, appearance reconditioning and repairs in preparation of vehicles for resale. In addition, dealers also become aware of defects through inspectors for service contract companies who examine cars for defects when deciding which cars qualify for the service. Dealers may also become aware of defects through sellers and through their own personal experience in selling or servicing a car previously.<sup>396</sup>

Despite this knowledge of defects, dealers often make overt misrepresentations regarding the

<sup>387</sup>The list of major systems will be particularly useful in providing a context for the evaluation of warranty coverage.

<sup>388</sup>Section 455.2(c). The list of defects set forth in Section 455.6 of the Rule is summarized on the back of the Buyers Guide. The non-safety items on the list were adapted from the list of systems and subsystems that are required to be inspected under the state of Wisconsin's used car inspection law, MVD 24. The safety-related defects derive from the model state inspection standards developed by the Department of Transportation. The defect list was included in earlier staff drafts of the Rule, and was available for cross examination during the hearings. The record demonstrates that mechanics can use the list to determine whether the car contains one or more defective components. See Staff Report at 141-160.

<sup>389</sup>Staff Report at 71-83.

<sup>389</sup>*Id.* at 266-67. In some cases, it is never disclosed. At 271.

<sup>390</sup>*Id.* at 268.

<sup>391</sup>*Id.* at 275. Many of these promises may be honored. Nevertheless, the "as is" disclosure, together with the spoken promises warning, will inform consumers that such promises may be unenforceable.

<sup>392</sup>*Id.* at 263.

<sup>393</sup>See n. 325, and accompanying text *supra*.

<sup>387</sup>Presiding Officer's Report at 79, 163.

<sup>388</sup>Staff Report at 262-263.



mechanical condition of cars offered for sale and also deceive consumers by remaining silent regarding major mechanical defects they know to exist.<sup>397</sup> In one study, dealers actually were given the results of independent third-party inspections but consistently failed to convey that information to prospective purchasers.<sup>398</sup> Consumers are not told of defects existing in cars at the time of sale and subsequently must bear the unanticipated costs of repairs.<sup>399</sup> Sellers, those most likely to have reliable information about the condition of the cars they offer for sale, currently have insufficient incentives to disclose the information fully and accurately.

a. *Benefits.* The benefits of disclosing known defects are analogous to the benefits of information disclosure in general. This disclosure is likely to increase the number of higher quality vehicles available for sale by dealers—as vehicles in sound mechanical condition command a premium price. In addition, vehicles in poor condition are more likely to be sold to consumers able and/or willing to cope with defects.<sup>400</sup>

With information available about certain major defects known to the dealer, consumers will be able to assess more accurately the true costs of ownership, i.e., purchase price plus repair costs for defects. Their purchasing decisions can incorporate consideration of a car's condition and expected future repair costs, and thus consumer injury resulting from unanticipated repair costs should be reduced. We anticipate that more accurate knowledge about the true condition of a car will also allow the consumer to assess more accurately the value of warranty coverage and will increase bargaining for desired warranty coverage and price on a car of known condition. Evidence from the Wisconsin Study<sup>401</sup> suggests consumers are least likely to be aware of mechanical defects such as those involving the transmission, brakes, exhaust system, etc., before purchase and most likely to discover these defects after purchase. In that study, when consumers became aware of defects

prior to purchase, many felt such awareness did enhance their ability to bargain. Dealers were most likely to respond by repairing the defects or reducing the price of the car.

If required to disclose certain major known defects prior to purchase, dealers will find it more difficult to make deceptive claims contrary to the written condition information. Consumers will have an additional source of information against which to check oral promises by dealers. This should reduce oral misrepresentation by dealers regarding the condition of cars at the time of sale.

While the market may currently provide some rewards to honest dealers in the form of enhanced reputation, there are frequently disincentives for dealers to disclose known defects on poor quality cars, since such disclosures by honest dealers may result in a loss of business to those dealers who falsely praise the condition of the vehicle. However, we expect that the Rule, and in particular the provision for civil penalties of up to \$10,000 for Rule violations, will change the incentive structure. Since all dealers will be under the same disclosure obligation, the disclosure of known defects required by the Rule will encourage the honest dealer to reveal the existence of known defects while discouraging dishonest dealers from selling cars in comparable condition without disclosing defects.

The Commission is aware of the argument that some dishonest dealers may purposefully fail to comply with the Rule's requirement to disclose major known defects by contending that they lacked knowledge of the defect. However, we expect that dealers obligated to disclose defects under the Rule will do so, especially since failure to comply with the requirement may be enforced by fines up to \$10,000 for each separate violation.<sup>402</sup> We further believe that consumers will come to expect some defect disclosures or indications that repairs have been made. Therefore, the market itself will generate incentives for dealers to disclose known defects.

In sum, requiring dealers to disclose known defects will enable consumers to obtain information without which they cannot evaluate the true worth of cars they are considering for purchase. This additional source of information will reduce consumer reliance on dealers' oral representations. Thus, to the extent that dealers are currently either silent about defects or overtly misrepresent the condition of cars, consumers should

have the opportunity to be more accurately informed about the actual condition of cars, with a concomitant reduction in consumer injury resulting from unanticipated repairs after purchase.

b. *Costs.* There are minimal costs to dealers associated with the disclosure of known defects. Dealers will not incur any direct costs other than the minimal costs associated with filling in and posting the Used Car Buyers Guide. Dealers are under no obligation to inspect vehicles to discover defects. They are merely required to disclose any of the specified defects about which they have knowledge obtained in the ordinary course of their business.

Evidence from the Wisconsin Study suggests that after implementation of a mandatory inspection and disclosure law in that state, even though dealer inspections did not increase substantially,<sup>403</sup> dealer disclosure of defects did increase significantly.<sup>404</sup> This evidence suggests that dealers did not simply begin to inspect more frequently or more thoroughly and thus begin to find more defects, but instead they began to disclose more defects about which they already knew. The Rule is not designed to require dealers to obtain more information on the condition of the cars they sell, but rather to disclose to consumers the information they already have. If dealers do begin to inspect more following implementation of the Rule, it can only be as a result of consumers demanding more information about defects prior to purchase. Thus, any increased costs to dealers resulting from increased inspections will be imposed by the market, not by the Rule, and such activities will not be undertaken by dealers unless consumers are willing to pay for them.

It is possible that dealers will incur some indirect costs as a result of the requirement to disclose known defects. Dealers may begin to make repairs to defective systems in order to avoid disclosing defects. Dealers are likely to repair only those defects which cost less to repair than the reduction in price required to sell a car with a particular defect disclosed. Whether this occurs will depend on consumer demand. Moreover, some dealers may repair defects rather than risk what they may believe to be the negative connotations associated with defect disclosure. Presumably dealers will not make such repairs unless consumers are willing to pay for them. Thus, any increase in repairs by dealers will be the result of

<sup>397</sup> *Id.* at 97-130.

<sup>398</sup> HX 82 at 11-12.

<sup>399</sup> Staff Report at 38-57; 110-126.

<sup>400</sup> In the current market, some buyers might prefer to buy used cars with fewer problems, even at an appropriately higher price. But in the absence of reliable information about mechanical condition, many buyers cannot tell which car is truly in better condition. Better and worse cars of the same make and model, indistinguishable to consumers, are therefore sold at similar prices. See Staff Report at 204-208.

<sup>401</sup> Wisconsin Study at 26-27, Tables IV-13 and IV-14.

<sup>402</sup> In addition, the record indicates that in Wisconsin, after passage of the mandatory inspection law, more buyers received pre-purchase defect information from dealers. See n. 255, *supra*.

<sup>403</sup> Staff Report at 229-229.

<sup>404</sup> *Id.* at 122.



the effect of the free flow of information on the condition of cars in the marketplace.<sup>405</sup>

The Commission believes that requiring the affirmative disclosure of major known defects at the point of purchase will remedy the deceptive practice established by the record of dealer failure to disclose known defects. On balance, the Commission believes the benefits of this disclosure requirement exceed the costs.

**4. General Information Disclosures.** The Rule requires the disclosure of information on three additional aspects of the transaction: a spoken promises warning, a pre-purchase inspection opportunity notice, and a list of major mechanical systems. These are to be posted as part of the Buyers Guide. The impact of each of the three disclosures is analyzed separately.

**a. Spoken Promises Warning.** The following notice appears at the top of the Buyers Guide:

**Important.**—Spoken promises are difficult to enforce. Ask the dealer to put all promises in writing. Keep this form.

The record demonstrates that many dealers orally misrepresent both the mechanical condition of used cars and the dealer's aftersale repair responsibility.<sup>406</sup> The record also demonstrates that consumers rely on oral statements made by dealers at the point of purchase even though those oral statements are not confirmed in writing.<sup>407</sup> Further, discrepancies between oral representations of warranty coverage and written warranty terms are commonplace.<sup>408</sup> In the face of consumer reliance on oral promises, dealers continue to make affirmative misrepresentations regarding their used cars' warranty coverage and mechanical condition. Consumers are therefore frequently deceived at the

point of purchase by representations which are not only untrue but also unenforceable. The Commission believes the record contains substantial justification for requiring a warning to consumers that all oral promises should be confirmed in writing. Inclusion of a spoken promises warning would alert consumers to beware of reliance on dealers' oral representations.

**(1) Benefits.** The Commission believes that a spoken promises warning will contribute to a reduction in oral misrepresentations of mechanical condition and warranty coverage by dealers and, in conjunction with the other disclosures on the Buyers Guide, assist in deterring deception. The level of misrepresentation at the used car lot will be reduced if consumers are informed of the need to secure a written record of all statements made in conjunction with a used car sale. If consumers do in fact ask dealers to confirm their promises in writing, making them available in case of disputes and enforceable in court, dealers are likely to be more reluctant than they are at present to make false or misleading statements.

At the same time, the introduction of this information into the used car market should lead to a decrease in consumer reliance on oral statements and an increased insistence by consumers on written confirmation of all representations made at the time of sale. Such written confirmation of representations should reduce ambiguity and/or misunderstanding between buyer and seller as to whether or not a promise was made. With promises regarding mechanical condition and warranty coverage in writing, the consumer will have an additional means of checking the representations made in any warranty or service contract document and can check the statements against the results of an independent inspection, if one is performed. Additional sources of information decrease the necessity of consumers relying exclusively on the oral promises of dealers.

If consumers are able to obtain written confirmation on the Buyers Guide of oral statements made by dealers at the time of sale, these statements become part of the sales contract and can be used in the event of later disputes between buyers and sellers. Having dealer promises in writing should increase the ease of enforceability of these promises and thus decrease the need for post-sale litigation to enforce oral promises.

**(2) Costs.** The printing costs, as described above, are minimal since the spoken promises warning will appear on

every Buyers Guide printed for the dealer.

**b. Pre-Purchased Inspection Notice.** The Buyers Guide contains a notice suggesting that buyers ask dealers about their policies regarding independent pre-purchase inspections:

Ask the dealer if you may have this car inspected by your mechanic either on or off the lot.

Although pre-purchase inspection by a third party can provide consumers with important information regarding the mechanical condition of a used car, the record demonstrates that few consumers actually seek independent inspections by a qualified mechanic.<sup>409</sup> This circumstance may be attributed to dealer policies which disallow such inspections and to factors which inhibit consumers from seeking inspections.<sup>410</sup> More importantly, however, consumers rely on dealer representations of sound mechanical condition, and thus do not perceive a need to obtain an independent pre-purchase inspection.<sup>411</sup>

**(1) Benefits.** The notice of availability of independent third-party inspections will generate several benefits for consumers and dealers. For consumers, a disclosure of the dealer's policy concerning independent inspections informs consumers that independent inspection is one means of corroborating dealer oral statements regarding mechanical condition. In addition, the disclosure alerts consumers to the fact that independent inspection is a valuable means of determining the condition of the used car at the time of sale. Nevertheless, the decision to allow such inspections will remain voluntary for the dealer; the notice will simply alert consumers to a possible opportunity. Any effects which flow from dealers' decisions to extend this opportunity will be the result of consumer demand and dealers' responses.

If the notice does, in fact, encourage consumers to obtain independent inspections, this may reduce consumer reliance on dealer-controlled information. If, as a result of third-party inspections, buyers find a discrepancy between the results of an independent evaluation and the condition reported

<sup>405</sup> The requirement to disclose known defects is not open-ended but is confined to those items (and conditions) specified in § 455.6 of the Rule. Although these criteria have been criticized by some participants on the grounds of vagueness, see, e.g., Staff Report at 57, n. 202; NADA, S-738; NADA, S-740, these criteria, which have been extant proposals since the outset of this proceeding, provide concrete standards for determining the existence of a defect. See n. 30 *supra*. Dealers in Wisconsin, whose state inspection regulation served as the basis for the inclusion of the items specified in Section 455.6(a)-(f), testified that they were able to apply those standards. Staff Report at 157-159, nn. 203-206. We believe, therefore, that the obligation to disclose known defects is sufficiently precise that dealers will not be forced to over-disclose because of significant ambiguity in the definition of "defect."

<sup>406</sup> Moreover, the repairs are generally more efficiently undertaken by dealers, particularly those with in-house mechanics, rather than by consumers.

<sup>407</sup> Staff Report at 103-130; 262-90; 295-315.

<sup>408</sup> *Id.* at 108-110; 274-77.

<sup>409</sup> *Id.*

<sup>410</sup> *Id.* at 93-94.

<sup>411</sup> *Id.* at 87-103. One dealer practice that discourages independent pre-purchase inspection is "detailing". The practice of "detailing" involves cleaning and cosmetically reconditioning cars without necessarily making mechanical or safety repairs. *Id.* at 97-103. Consumers who equate appearance with performance do not believe that independent, pre-purchase inspections are necessary.



by the dealer, buyers would have enhanced their bargaining position with respect to the dealer.<sup>412</sup> On the other hand, the possibility of independent inspections may provide dealers with a disincentive to misrepresent orally mechanical condition in light of the risk that the consumer could discover misrepresentations as a result of third-party evaluations.

The notice not only focuses consumers' attention on the idea of pre-purchase inspection as a means of evaluating a car's mechanical condition but also provides consumers with a means of comparison shopping among the various terms and conditions offered by different used car dealers. This possibility may also provide benefits to dealers. Some dealers may make the availability of independent inspections a component of their marketing strategy. Their willingness to allow third-party inspections could provide consumers with information on the trustworthiness of the dealer. The notice may thus provide dealers with a way of communicating to consumers that their representations are trustworthy and will withstand the test of comparison with a third-party evaluation.

(2) *Costs.* There are no direct costs associated with this disclosure. As with the spoken promises warning, the notice of availability of pre-purchase inspection is to be pre-printed on the Used Car Buyers Guide.

There may be some indirect costs resulting from disclosure of independent inspection opportunity. If, as a result of the disclosure, consumers begin to value independent off-premises inspections and begin to demand such inspections, dealers may incur additional costs. These costs may include the costs of increased insurance premiums and employee time to accompany vehicles off the premises to safeguard against misuse or theft and the cost of foregone opportunities to show cars to other prospective buyers while the cars are off the lot. Dealers would presumably pass along to consumers any increased costs of this sort and would only offer the opportunity for third-party inspections if, and to the extent that, consumers were willing to pay a price which would allow the dealers to cover those costs. Any costs of this sort would thus be imposed on dealers by the market, not by the Rule.

c. *List of Major Systems.* The Buyers Guide also contains a pre-printed list of 14 major mechanical and safety systems of a car. A notice urges buyers to "ask about the current condition" of these systems, and examine the form to

determine the extent of warranty coverage and known defects. The list of systems includes all major mechanical components of an automobile.

The record shows that dealer misrepresentations concerning mechanical condition are often made on a system-by-system basis.<sup>413</sup> The components listed are those most likely to be represented by dealers as being in good condition but without any confirmation of such representations in writing.<sup>414</sup>

(1) *Benefits.* The list of major mechanical systems identifies for consumers the important systems on which they may want to seek mechanical condition information, either from the dealer or through an independent inspection. Furthermore, the list will enable consumers to evaluate which systems are covered by any warranties offered by the dealer. The list may also prompt consumers to seek information on costs to repair systems not in good order.

The record demonstrates that consumers are most interested in the condition of the car at the time of sale but are discouraged from inspecting mechanical condition as a result of dealer practices.<sup>415</sup> Highlighting the importance of mechanical systems may lead consumers to focus on them somewhat more specifically. As consumers begin to be more astute and critical, dealers' marketing incentives may shift away from cosmetic pre-sale reconditioning to remedying mechanical condition factors.

Thus, the list of systems will provide consumers with a framework for systematically evaluating and comparing the mechanical condition and warranty coverage offered between cars and dealers. The increased availability of information to consumers should also contribute to a reduction in the incidence of unanticipated repair costs by consumers.

(2) *Costs.* The listing of major mechanical systems will not lead to any direct costs to dealers since it will be pre-printed on the Used Car Buyers Guide.

5. *Summary.* The Commission believes that each of the elements of the Rule will diminish the deceptive practices currently existing in the used car market. We expect that the elements of

the Rule, taken together, will provide significant benefits while imposing only minimal direct costs. Any indirect costs that might result from the rule would result from dealer attempts to satisfy consumer demand and, therefore, by definition would be justified by significant benefits.

B. *Other Economic Issues Raised In The Proceeding.* During the course of this proceeding some participants raised several issues that they considered important in determining the potential costs of any rule regulating the used car industry. Those issues—dealer market share and dealer exit, and price and marketability of older cars—were raised in the context of more restrictive alternative versions of the Rule. We do not believe that changes in any of these areas would result from imposition on the marketplace of a Rule as unobtrusive as the final version of the Used Car Rule. If consumer demand causes some shifts in the structure of the market, this would be a result of more efficient functioning of the market itself. Such results are not costs of regulations, but benefits from regulation.

1. *Market share of dealers will decline; some dealers will exit from the market.*

Some commentators pointed to data from the Wisconsin Study<sup>416</sup> that demonstrate a decline in the share of the used car market held by dealers after the passage of Wisconsin's used car inspection law. These commentators suggested that any similar inspection-focused rule could have the same consequences.

We believe that the Wisconsin Study indicates that the decline in dealer market shares in Wisconsin was caused in part by the mandatory inspection and disclosure aspects of the law in that state, along with the requirement that dealers repair safety defects. Some dealers were unwilling to repair safety items and therefore may have chosen to leave the market. Others were unwilling to assume the responsibility for post-purchase repairs mandated if dealers checked items "OK".<sup>417</sup>

The Rule that the Commission has adopted does not require safety repairs and in no way mandates post-purchase repairs. Dealer costs will not be increased since they will not be forced to make additional repairs. Therefore, there is no reason to believe that the decline in dealer market shares which occurred in the context of the

<sup>412</sup> Indeed, the Commission's expectation is that, under these circumstances, the consumer will either: (1) demand warranty coverage for the discrepancy; (2) negotiate a reduced price; (3) having read the "spoken promises" warning, demand that the dealer reduce oral statements to writing; or (4) decide not to do business with the dealer.

<sup>413</sup> Staff Report at 109-115.

<sup>414</sup> *Id.*

<sup>415</sup> *Id.* at 97-103. These practices include oral misrepresentations of mechanical condition and "detailing". See n. 351 *supra* and Staff Report at 97-130.

<sup>416</sup> HX 164(A) at 55.

<sup>417</sup> *Id.* at 109-130.



mandatory inspection and safety repair law in Wisconsin is indicative of the likely impact of the final Used Car Rule.

On the contrary, to the extent that the Rule succeeds in informing buyers about the quality of used cars, many high quality used cars which were previously not sold through dealers may be marketed by them.<sup>418</sup> The Wisconsin Study showed that people who buy from private parties rate the quality of information received from the seller higher than the quality of information received by people who buy from dealers.<sup>419</sup> The Commission believes that the Rule will improve the quality of information received from dealers, and thereby attract some buyers away from the private market and into the dealer market. Any loss of market share or dealer exit from the market will be the result of a more competitively efficient market. Those who cannot sell without misrepresentations will leave the market because of firm inefficiencies, rather than overburdensome regulations.

2. Price of cars will increase. A related argument put forth by some is that the purchase price of cars will increase as the result of increased inspection, pre-sale repair and warranty repair costs. However, in analyzing this argument, it is important to keep in mind that the important cost is ownership cost, not purchase price. The real cost of buying a car includes the purchase price and any costs incurred by the consumer to repair defects in the vehicle. The Commission has no reason to believe that the ownership cost of used cars will increase as a result of the Rule.

The Rule is not likely to result in a large increase in inspections since it was not designed to either require or directly encourage inspections by dealers. Some additional pre-sale and warranty repairs by dealers may result and these could increase the prices of some used cars. However, these dealer repairs will produce a comparable (or greater) decrease in repair costs borne by purchasers.<sup>420</sup> Therefore, the Commission does not believe that total post-Rule ownership costs will exceed total pre-Rule ownership costs.

Another perspective on possible price changes suggests that, in the absence of reliable information about mechanical condition, consumers pay less than they might otherwise for vehicles that are in excellent mechanical condition. On the other hand, they pay more than they

would for vehicles in poor condition.<sup>421</sup> One effect of information disclosure is to make the price differentials between various vehicles more accurately reflect their differences in condition and serviceability. Under this analysis, the Rule would produce price increases in cars that ought to bear a higher price, and price decreases in cars that currently sell for more than they are worth.

3. Dealers will be unable to sell older or high-mileage cars if they have to disclose known defects. Some have argued that if dealers are required to disclose known defects, they will be unable to continue to sell older, high mileage cars. We do not believe this will result from the Rule. Such vehicles will still be sold by dealers, but perhaps at lower prices than they are currently able to obtain in the absence of disclosure. We view such a reduction in price as a desirable market-determined response to buyer preference and accurate information regarding the car.

C. Conclusion. In formulating this Rule as the remedy for recorded abuses in the used car industry, the Commission has assessed the economic impact on consumers and small businesses. The Commission concludes that the benefits of this Rule outweigh its costs and that the Rule will be effective in remedying the deceptive practices established in the record.

#### V. Other Matters

A. Effective Date. Because of the legislative review provisions set forth in section 21 of the FTC Improvements Act of 1980,<sup>422</sup> the effective date of this Rule is most appropriately tied to the conclusion of the legislative review period. Under the terms of the statute, that period runs for ninety calendar days of continuous legislative session.<sup>423</sup>

We have determined that the Rule should become effective six months after the conclusion of congressional review. We believe that six months provides a sufficient amount of time for both the industry and consumers to become familiar with the requirements of the Rule. In addition, the Commission will accept petitions for exemption, pursuant to Section 455.7 of the Rule, during this period.

B. Impact Evaluation. The Commission believes it is essential to

measure the degree of impact this Rule will have on the used car market, and therefore, has determined to perform an impact evaluation study three years from the effective date of the Rule. Such a study should assist the Commission in assessing the effectiveness of the Rule, and could illustrate whether proceedings to amend the Rule would be appropriate.

C. Readability. With the adoption of this Rule, the Commission again recognizes its goal of writing understandable regulations. The Commission has for some time required that disclosures to consumers be written in plain and easily understandable language.<sup>424</sup> The Used Car Buyers Guide was designed and reviewed to ensure that the disclosures will be conveyed in a clear and succinct manner. Moreover, various versions of the Buyers Guide were subjected to several rounds of consumer testing to measure comprehensibility. Based on the results of that testing, the Commission believes the Buyers Guide will be understood by consumers. The Rule itself is also written in understandable language. This reflects the Commission's commitment to the principle that regulations which apply to small businesses should be readily understood. After reviewing the language of the Rule carefully, the Commission believes that its provisions will be understood by the affected industry members.

Accordingly, Title 16 of the Code of Federal Regulations is amended by the addition of new Part 455.

### PART 455—USED MOTOR VEHICLE TRADE REGULATION RULE

#### Sec.

- 455.1 General duties of a used vehicle dealer; definitions.
- 455.2 Consumer sales—window form.
- 455.3 Window form.
- 455.4 Contrary statements.
- 455.5 Spanish language sales.
- 455.6 Major known defect standards.
- 455.7 State exemptions.
- 455.8 Severability.

#### Appendix To Used Motor Vehicle Trade Regulation Rule

Authority: 88 Stat. 2189, 15 U.S.C. 2309; 38 Stat. 717, as amended 15 U.S.C. 41 et seq.

#### § 455.1 General duties of a used vehicle dealer; definitions.

(a) It is a deceptive act or practice for any used vehicle dealer, when that dealer sells or offers for sale a used vehicle in or affecting commerce as

<sup>418</sup> *Id.* at Table V-14.

<sup>419</sup> Staff Report at 204-206.

<sup>420</sup> This applies to all categories of information except warranty content. Wisconsin Study, HX 164(A), Table IV-2. See also Staff Report at 146-148.

<sup>421</sup> In Wisconsin, where safety repairs were mandated, ownership costs actually declined after passage of the inspection and safety repair law. However, we cannot state with any assurance that this decline was caused by the increased repairs mandated by the law. Wisconsin Study, HX 164(A) at 59.

<sup>422</sup> Staff Report at 204-206.

<sup>423</sup> 15 U.S.C. 57a-1.

<sup>424</sup> Section 21(a)(2) of the FTC Improvements Act, 15 U.S.C. 57a-1.



"commerce" is defined in the Federal Trade Commission Act:

(1) To misrepresent the mechanical condition of a used vehicle;

(2) To fail to disclose, prior to sale, any material defect in the mechanical condition of the used vehicle known to the dealer;

(3) To represent that a used vehicle, or any component thereof, is free from material defects in mechanical condition at the time of sale unless the dealer has a reasonable basis for such representation at the time it is made;

(4) To fail to make available, prior to sale, the terms of any written warranty offered in connection with the sale of a used vehicle;

(5) To misrepresent the terms of any warranty offered in connection with the sale of a used vehicle;

(6) To represent that a used vehicle is sold with a warranty when the vehicle is sold without any warranty;

(7) To fail to disclose, prior to sale, that a used vehicle is sold without any warranty.

(b) The Commission has adopted this Rule in order to prevent the deceptive acts or practices defined in paragraph (a) of this section. It is a violation of this Rule for any used vehicle dealer to fail to comply with the requirements set forth in §§ 455.2 through 455.6. If a used vehicle dealer complies with the requirements of §§ 455.2 through 455.6, the dealer does not violate this Rule.

(c) The following definitions shall apply for purposes of this part:

(1) "Vehicle" means any motorized vehicle, other than a motorcycle, with a

gross vehicle weight rating (GVWR) of less than 8500 lbs., a curb weight of less than 6000 lbs., and a frontal area of less than 46 sq. ft.

(2) "Used vehicle" means any vehicle driven more than the limited use necessary in moving or road testing a new vehicle prior to delivery to a consumer, but does not include any vehicle sold only for scrap or parts (title documents surrendered to the state and a salvage certificate issued).

(3) "Dealer" means any person or business which sells or offers for sale a used vehicle after selling or offering for sale five (5) or more used vehicles in the previous twelve months, but does not include a bank or financial institution, a business selling a used vehicle to an employee of that business, or a lessor selling a leased vehicle by or to that vehicle's lessee or to an employee of the lessee.

(4) "Consumer" means any person who is not a used vehicle dealer.

(5) "Warranty" means any undertaking in writing, in connection with the sale by a dealer of a used vehicle, to refund, repair, replace, maintain or take other action with respect to such used vehicle and provided at no extra charge beyond the price of the used vehicle.

(6) "Implied warranty" means an implied warranty arising under State law (as modified by the Magnuson-Moss Act) in connection with the sale by a dealer of a used vehicle.

(7) "Service contract" means a contract in writing for any period of time or any specific mileage to refund, repair,

replace, or maintain a used vehicle and provided at an extra charge beyond the price of the used vehicle, provided that such contract is not regulated in your State as the business of insurance.

(8) "You" means any dealer, or any agent or employee of a dealer, except where the term appears on the window form required by § 455.2(a).

(9) "Defect", for the purposes of § 455.2(c), means any of the conditions described in § 455.6.

#### § 455.2 Consumer sales—window form.

(a) *General duty.* Before you offer a used vehicle for sale to a consumer, you must prepare, fill in as applicable and display on that vehicle a "Used Car Buyers Guide" as required by this rule.

(1) Use a side window to display the form so both sides of the form can be read, with the title "Used Car Buyers Guide" facing to the outside. You may remove a form temporarily from the window during any test drive, but you must return it as soon as the test drive is over.

(2) The capitalization, punctuation and wording of all items, headings, and text on the form must be exactly as required by this Rule. The entire form must be printed in 100% blank ink on a white stock no smaller than 12 inches high by 7 1/4 inches wide in the type styles, sizes and format indicated.

BILLING CODE 6750-01-M



# USED CAR BUYERS GUIDE

**IMPORTANT:** Spoken promises are difficult to enforce. Ask the dealer to put all promises in writing. Keep this form.

VEHICLE MAKE \_\_\_\_\_

MODEL \_\_\_\_\_

YEAR \_\_\_\_\_

COLOR \_\_\_\_\_

**NOTICE:** For your protection and safety

Ask about the current condition of the following major mechanical and safety systems of this car. See below which of these systems, if any, are covered by a warranty and which systems are known by the dealer to contain major defects. Dealers must inform you in writing if they know of certain defects in this car's major systems.

|                              |                   |
|------------------------------|-------------------|
| Frame & Body                 | Brake System      |
| Engine                       | Steering System   |
| Transmission and Drive Shaft | Suspension System |
| Differential                 | Tires             |
| Cooling System               | Wheels            |
| Electrical System            | Exhaust System    |
| Fuel System                  | Accessories       |

**PRE PURCHASE INSPECTION:** Ask the dealer if you may have this car inspected by your mechanic either on or off the lot.

## WARRANTIES FOR THIS CAR:

**NO IMPLIED WARRANTY — "AS IS":** This means you will pay all costs for any repairs needed when you buy the car or after the time of sale. If this box is checked, the dealer makes no written promises about this car's condition.

**FULL LIMITED WARRANTY:** The dealer will pay % of the total repair bill for covered systems that fail during the warranty. Ask the dealer for a copy of the warranty document for a full explanation of warranty coverage, exclusions, and the dealer's repair obligations. Under state law, "implied warranties" may give you even more rights.

**SYSTEMS COVERED:**

**DURATION:**

**SERVICE CONTRACT:** A service contract is available from for \$ \_\_\_\_\_ extra. This service contract adds to the dealer's responsibilities under any warranty. If you buy a service contract within 90 days of the time of sale, state law "implied warranties" may give you additional rights.

**MAJOR KNOWN DEFECTS:** Dealers must tell you in the space below if they know about certain defects in this car's major systems. The defects that must be disclosed if known are listed on the back of this form. However, there may be defects that are unknown to the dealer. If nothing is listed, the car is not necessarily free of defects.

See the back of this form for important additional major defect information.



Below is a list of some major defects that may occur in used cars.

#### Frame & Body

Frame-cracks, corrective welds, or rusted through  
Dogtracks—bent or twisted frame

#### Engine

Oil leakage, excluding normal seepage  
Cracked block or head  
Belts missing or inoperable  
Knocks or misses related to camshaft lifters and push rods  
Abnormal exhaust discharge

#### Transmission & Drive Shaft

Improper fluid level or leakage, excluding normal seepage  
Cracked or damaged case which is visible  
Abnormal noise or vibration caused by faulty transmission or drive shaft  
Improper shifting or functioning in any gear  
Manual clutch slips or chatters

#### Differential

Improper fluid level or leakage excluding normal seepage  
Cracked or damaged housing which is visible  
Abnormal noise or vibration caused by faulty differential

#### Cooling System

Leakage, including radiator  
Improperly functioning water pump

#### Electrical System

Battery leakage  
Improperly functioning alternator, generator, battery or starter

#### Fuel System

Visible leakage

#### Inoperable Accessories

Gauges or warning devices  
Air conditioner  
Heater & Defroster

#### Brake System

Failure warning light broken  
Pedal not firm under pressure (DOT specs.)  
Not enough pedal reserve (DOT specs.)  
Does not stop vehicle in straight line (DOT specs.)  
Hoses damaged  
Drum or rotor too thin (Mfr. specs.)  
Lining or pad thickness less than 1/32 inch  
Power unit not operating or leaking  
Structural or mechanical parts damaged

#### Steering System

Too much free play at steering wheel (DOT specs.)  
Free play in linkage more than 1/4 inch  
Steering gear binds or jams  
Front wheels aligned improperly (DOT specs.)  
Power unit belts cracked or slipping  
Power unit fluid level improper

#### Suspension System

Ball joint seals damaged  
Structural parts bent or damaged  
Stabilizer bar disconnected  
Spring broken  
Shock absorber mounting loose  
Rubber bushings damaged or missing  
Radius rod damaged or missing  
Shock absorber leaking or functioning improperly

#### Tires

Tread depth less than 2/32 inch  
Sizes mismatched  
Visible damage

#### Wheels

Visible cracks, damage or repairs  
Mounting bolts loose or missing

#### Exhaust System

Leakage

DEALER

ADDRESS

SEE FOR COMPLAINTS

**IMPORTANT:** The information on this form is part of any contract to buy this vehicle. Removal of this label before consumer purchase (except for purpose of test driving) is a violation of federal law (16 C.F.R. 455).

Defect disclosure specifications are printed in Volume 16 C.F.R. (Code of Federal Regulations) Part 455.

BILLING CODE 6750-01-C



When filling out the form, follow the directions in paragraph (b) through (g) of this section § 455.4.

(b) **Warranties.**—(1) **No Implied Warranty—“As Is”/Implied Warranties Only.** (i) If you offer the vehicle without any implied warranty, i.e., “as is,” mark the box provided. If you offer the vehicle with implied warranties only, substitute the disclosure specified below, and mark the box provided. If you first offer the vehicle “as is” or with implied warranties only but then sell it with a warranty, cross out the “No Implied Warranty—“As Is”” or “Implied Warranties Only” disclosure, and fill in the warranty terms in accordance with paragraph (b)(2) of this section.

(ii) If your State law limits or prohibits “as is” sales of vehicles, that State law overrides this part and this rule does not give you the right to sell “as is.” In such States, the heading “No Implied Warranty—“As Is”” and the paragraph immediately accompanying that phrase must be deleted from the form, and the following heading and paragraph must be substituted. If you sell vehicles in States that permit “as is” sales, but you choose to offer implied warranties only, you must also use the following disclosure instead of “No Implied Warranty—“As Is””:

#### **Implied Warranties Only**

This means that the dealer does not make any specific promises to fix things that need repair when you buy the car or after the time of sale. But, State law “implied warranties” may give you some rights to have the dealer take care of serious problems that were not apparent when you bought the car.

(2) **Full/Limited Warranty.** If you offer the vehicle with a warranty, briefly describe the warranty terms in the space provided. This description must include the following warranty information:

(i) Whether the warranty offered is “Full” or “Limited.”<sup>2</sup> Mark the box next to the appropriate designation.

(ii) Which of the specific systems are covered (for example, “engine, transmission, differential”). You cannot use shorthand, such as “drive train” or

“power train” for covered systems.

(iii) The duration (for example, “30 days or 1,000 miles, whichever occurs first”).

(iv) The percentage of the repair cost paid by you (for example, “The dealer will pay 100% of the total repair bill” or “The Dealer will pay 60% of the total repair bill”).

(v) If the warranty does not cover parts and labor equally, you must disclose this. Delete the line from the form which reads “The dealer will pay —% of the total repair bill” and substitute “The dealer will pay —% of the labor and —% of the parts.” Fill in the percentage of the cost of parts and labor you will pay under the warranty. If, following negotiations, you and the buyer agree to changes in the warranty coverage, mark the changes on the form, as appropriate.

If you first offer the vehicle with a warranty, but then sell it without one, cross out the offered warranty and mark either the “No Implied Warranty—“As Is”” box or the “Implied Warranties Only” box, as appropriate.

(3) **Service Contracts.** If you make a service contract (other than a contract that is regulated in your state as the business of insurance) available on the vehicle, you must add the following heading and paragraph below the “Full/Limited Warranty” disclosure and fill it in as applicable.<sup>3</sup>

#### **Service Contract**

A service contract is available from \_\_\_\_\_ (contractor's name) for \$ \_\_\_\_\_. This service contract adds to the dealer's responsibilities under any warranty. If you buy a service contract within 90 days of the time of sale, state law “implied warranties” may give you additional rights.

(c) **Condition—Major Known Defects.** You must disclose in the space provided on the front of the “Used Car Buyers Guide” form any defects listed in Section 455.6 of this Rule that you know about at the time the car is sold. For purposes of this part, you have knowledge of a defect if you (which pursuant to Section 455.1(c)(8) includes your agent or employee) have obtained facts or information about the condition of a vehicle (e.g., through an inspection, from a previous owner, from the seller at an auction) which would lead a reasonable person under the

circumstances to conclude that the car contained one or more of the defects listed in Section 455.6 of this Rule.<sup>4</sup>

(d) **Name and Address.** Put the name and address of your dealership in the space provided. If you do not have a dealership, use the name and address of your place of business (for example, your service station) or your own name and home address.

(e) **Make, Model, Model Year, VIN.** Put the vehicle's name (for example, “Chevrolet”), model (for example, “Vega”), model year, and Vehicle Identification Number (VIN) in the spaces provided.

(f) **Complaints.** In the space provided, put the name and telephone number of the person who should be contacted if any complaints arise after sale.

#### **§ 455.3 Window form.**

(a) **Form Given to Buyer.** Give the buyer of a used vehicle sold by you the window form displayed under § 455.2 containing all of the disclosures required by the Rule and reflecting the warranty coverage agreed upon. If you prefer, you may give the buyer a copy of the original, so long as that copy accurately reflects all of the disclosures required by the Rule and the warranty coverage agreed upon.

(b) **Incorporated into Contract.** The information on the final version of the window form is incorporated into the contract of sale for each used vehicle you sell to a consumer. Information on the window form overrides any contrary provisions in the contract of sale. To inform the consumer of these facts, include the following language conspicuously in each consumer contract of sale:

“The information you see on the window form for this vehicle is part of this contract. Information on the window form overrides any contrary provisions in the contract of sale.”

#### **§ 455.4 Contrary statements.**

You may not make any statements, oral or written, or take other actions which alter or contradict the disclosures required by §§ 455.2 and 455.3. You may negotiate over warranty coverage, as provided in Section 455.2(b) of this part, as long as the final warranty terms are identified in the contract of sale and summarized on the copy of the window form you give to the buyer.

<sup>1</sup> See § 455.5 n. 5 for the Spanish version of this disclosure.

<sup>2</sup> A “Full” warranty is defined by the Federal Minimum Standards for Warranty set forth in § 104 of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2304 (1975). The Magnuson-Moss Warranty Act does not apply to vehicles manufactured before July 4, 1975. Therefore, if you choose not to designate “Full” or “Limited” for such cars, cross out both designations, leaving only “Warranty”.

<sup>3</sup> See § 455.5 n. 5 for the Spanish version of this disclosure.

<sup>4</sup> Illustrations of the provisions of this part are set out in the Appendix to this Rule.



**§ 455.5 Spanish language sales.**

If you conduct a sale in Spanish, the window form required by § 455.2 and the contract disclosures required by § 455.3 must be in that language. You may display on a vehicle both an English language window form and a Spanish language translation of that form. Use the following translation and layout for Spanish language sales:<sup>a</sup>

<sup>a</sup> Use the following language for the "Implied Warranties Only" disclosure when required by § 455.2(b)(1):

**Garantias implícitas solamente.**

Este termino significa que el vendedor no hace promesas específicas de arreglar lo que requiera reparacion cuando usted compra el automovil o despues del momento de la venta. Pero, las "garantias implícitas" de la ley estatal pueden darle a usted algunos derechos y hacer que el vendedor resuelva problemas graves que no fueron evidentes cuando usted compro el automovil.

Use the following language for the "Service Contract" disclosure when required by § 455.2(b)(3):

Contrato De Servicio. Puede obtenerse un contrato de servicio de por la suma adicional de US \$ . Este contrato de servicio aumenta las responsabilidades del vendedor en virtud de cualquier garantia. Si adquiere usted un contrato de servicio dentro del plazo de 90 dias a partir del momento de la venta, las "garantias implícitas" de la ley estatal pueden darle derechos adicionales.

BILLING CODE 8750-01-M



# GUIA DEL COMPRADOR

**IMPORTANTE:** Las promesas verbales son difíciles de hacer cumplir. Solicite al vendedor que ponga todas las promesas por escrito. Conserve este formulario.

Marca del vehículo

Modelo

Año

Número de identificación

## AVISO: Para su protección y seguridad

Infórmese acerca de la condición actual de los siguientes sistemas mecánicos y de seguridad de este automóvil. Vea a continuación cuáles de estos sistemas, si los hubiere, están amparados por una garantía y qué sistemas conoce el vendedor que contienen importantes defectos. Los vendedores están obligados a informarle por escrito si conocen ciertos defectos en los principales sistemas de este automóvil.

Chasis y carrocería

Motor

Transmisión y eje de cardan

Diferencial

Sistema de refrigeración

Sistema eléctrico

Sistema de combustible

Sistema de frenos

Sistema de dirección

Sistema de suspensión

Llantas

Ruedas

Sistema de escape

Accesorios

**INSPECCION PREVIA A LA COMPRA:** Pregunte al vendedor si puede usted traer un mecánico para que inspeccione el automóvil o llevar el automóvil para que éste lo inspeccione en su taller.

## GARANTIAS PARA ESTE AUTOMOVIL:

☐ **SIN GARANTIA IMPLICITA—"AS IS" (TAL Y COMO ESTA).** Significa que usted pagará todos los gastos de las reparaciones que sean necesarias al comprar usted el automóvil o después de efectuarse la venta. Si se ha marcado este recuadro, el vendedor no hace promesas escritas acerca de la condición de este automóvil.

**GARANTIA ☐ COMPLETA ☐ LIMITADA.** El vendedor pagará \_\_\_\_\_ % de la factura total de reparar los sistemas cubiertos que dejen de funcionar durante el período de garantía. Pida al vendedor una copia del documento de garantía donde se explican detalladamente la cobertura de la garantía, exclusiones y las obligaciones que tiene el vendedor de realizar reparaciones. Conforme a la ley estatal, las "garantías implícitas" pueden darle a usted incluso más derechos.

**SISTEMAS CUBIERTOS POR LA GARANTIA:**

**DURACION:**

|       |       |
|-------|-------|
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |

☐ **CONTRATO DE SERVICIO.** Puede obtenerse un contrato de servicio de \_\_\_\_\_ por la suma adicional de US \$ \_\_\_\_\_. Este contrato de servicio aumenta las responsabilidades del vendedor en virtud de cualquier garantía. Si adquiere usted un contrato de servicio dentro del plazo de 90 días a partir del momento de la venta, las "garantías implícitas" de la ley estatal pueden darle derechos adicionales.

**DEFECTOS IMPORTANTES CONOCIDOS:** Los vendedores le indicarán en el espacio a continuación si conocen la existencia de ciertos defectos en los sistemas principales de este automóvil. Los defectos que deberán indicarse si se conocen se relacionan al dorso de este formulario. Sin embargo, pueden haber defectos desconocidos para el vendedor. El hecho de que no se indique ninguno no quiere decir necesariamente que el automóvil esté libre de defectos.

Véase el dorso de este formulario donde se proporciona información adicional importante sobre los principales defectos.



**A continuación figura una lista de algunos de los principales defectos que pueden ocurrir en automóviles usados.**

**Chasis y carrocería**

Chasis-grietas, soldaduras correctivas u oxidado  
Chasis doblado o torcido

**Motor**

Fuga de aceite, excluyendo el escape normal  
Bloque o tapa de recámara agrietados  
Correas que faltan o no funcionan  
Fallo o pistoneo  
Emisión excesiva de humo por el sistema de escape

**Transmisión y eje de cardan**

Nivel de líquido inadecuado o fuga, excluyendo filtración normal  
Cubierta agrietada o dañada visible  
Vibración o ruido anormal ocasionado por una transmisión o eje de cardan defectuoso  
Cambio de marchas o funcionamiento inadecuado en cualquier marcha  
Embrague manual patina o vibra

**Diferencial**

Nivel de líquido inadecuado o fuga, excluyendo filtración normal  
Cubierta agrietada o dañada visible  
Ruido o vibración anormal ocasionado por diferencial defectuoso

**Sistema de refrigeración**

Fuga, incluido el radiador  
Bomba de agua defectuosa

**Sistema eléctrico**

Fuga en las baterías  
Alternador, generador, batería o motor de arranque defectuosos

**Sistema de combustible**

Escape visible de combustible

**Accesorios averiados**

Indicadores o medidores del cuadro de instrumentos  
Acondicionador de aire  
Calentador y descarchador

**Sistema de frenos**

Luz de advertencia de falla dañada  
Pedal no firme bajo presión (Especif. del Dpto. de Transp.)  
Juego insuficiente en el pedal (Especif. del Dpto. de Transp.)  
No detiene el vehículo en línea recta (Especif. del Dpto. de Transp.)  
Conductos dañados  
Tambor o disco muy delgados (Especif. del fabricante)  
Grosor de las bandas de los frenos menor de 1/32 de pulgada  
Sistema de servofreno dañado o con escape  
Partes estructurales o mecánicas dañadas

**Sistema de dirección**

Juego excesivo en el volante (Especif. del Dpto. de Transp.)  
Juego en el varillaje en exceso de 1/4 de pulgada  
Engranaje del volante de dirección se agarrota  
Ruedas delanteras mal alineadas (Especif. del Dpto. de Transp.)  
Correas del sistema de servodirección agrietadas o flojas  
Nivel del líquido del sistema de servodirección inadecuado

**Sistema de suspensión**

Sellos de conexión de rodamientos defectuosos  
Piezas estructurales dobladas o dañadas  
Barra de estabilización desconectada  
Resorte roto  
Montura del amortiguador floja  
Bujes de goma dañados o ausentes  
Estabilizador para curvas dañado o ausente  
Amortiguador tiene fuga o funciona defectuosamente

**Llantas**

Profundidad de la banda de rodamiento menor de 2/32 de pulgada  
Diferentes tamaños de llanta  
Daños visibles

**Ruedas**

Grietas visibles, daños o reparaciones  
Pernos de montaje sueltos o ausentes

**Sistema de escape**

Fuga

Vendedor

Dirección

Véase para reclamaciones

**IMPORTANTE:** La información contenida en este formulario forma parte de todo contrato de compra de este vehículo. Constituye una contravención de la ley federal (16 C.F.R. 455) quitar este rótulo antes de la compra del vehículo por el consumidor (salvo para conducir el automóvil en calidad de prueba).

Las especificaciones para la divulgación de los defectos están impresas en el Volumen 16 C.F.R. (Código de Disposiciones Federales), Parte 455

BILLING CODE 6750-01-C



**§ 455.6 Major known defect standards.**

You are not required to inspect, but you are required to disclose on the Buyers Guide any defects set forth below if known. For purposes of this Rule, a used vehicle has defects if it satisfies the criteria set forth in paragraphs (a) through (i) of this section or if it fails to meet any of the standards established by the test procedures set forth in paragraphs (j) through (n) of this section or any other test procedures that, when properly applied, produce the same or substantially similar results. When deciding whether an item listed below is defective, treat all vehicles the same; do not use lower standards for older or cheaper vehicles. Use the language specified in the text of the Rule to describe the defect on the window form.

**Examples:**

(1) If you know that the engine head is cracked, you must write in the Major Known Defects section of the form, "Engine—Cracked head".

(2) If you know that the tire tread depth is less than  $\frac{3}{32}$  of an inch, you must write in the Major Known Defects section of the form: "Tires—Tread Depth Less Than  $\frac{3}{32}$  inch".

**(a) Frame and Body.**

(1) Frame—cracks, corrective welds or rusted through

(2) Dogtracks—bent or twisted frame

**(b) Engine.**

(1) Oil leakage, excluding normal seepage

(2) Cracked block or head

(3) Belts missing or inoperable

(4) Knocks or misses related to camshaft lifters and push rods

(5) Abnormal exhaust discharge

**(c) Transmission and Drive Shaft.**

(1) Improper fluid level or leakage, excluding normal seepage

(2) Cracked or damaged case, which is visible

(3) Abnormal noise or vibration caused by faulty transmission or drive shaft

(4) Improper shifting or functioning in any gear

(5) Manual clutch slips or chatters

**(d) Differential.**

(1) Improper fluid level or leakage, excluding normal seepage

(2) Cracked or damaged housing, which is visible

(3) Abnormal noise or vibration caused by faulty differential

**(e) Cooling System.**

(1) Leakage, including radiator

(2) Improperly functioning water pump

**(f) Electrical System.**

(1) Battery leakage

(2) Improperly functioning alternator, generator, battery, or starter

(g) Fuel System. (1) Visible leakage

(h) Inoperable Accessories.

(1) Gauges or warning devices

(2) Air conditioner

(3) Heater and defroster

(i) Exhaust System. (1) Leakage

(j) Brake System—General Procedure.

Use 25 lbs. of force to test power-assisted or full-power brakes (50 lbs. for non-power brakes) unless a different force is given below.

(1) Brake System—Failure warning light broken (if original equipment).

Procedure: Apply the parking brake and turn the ignition to "start" or test by other means set by the manufacturer to make sure the light works.

(2) Brake System—Pedal not firm under pressure. Procedure: With the engine running on vehicles equipped with power brake systems, and the ignition turned to "on" in other vehicles, apply a force of 125 pounds to the brake pedal and hold for 10 seconds. Make sure that there is no decrease in pedal height and that the failure lamp does not light.

(3) Brake System—Not enough pedal reserve.

Procedure: Depress the brake pedal fully (with the engine running in vehicles equipped with power assisted brakes). The pedal travel must not be more than 80 percent of the distance from the pedal's free position to the floorboard or pedal stop. This test is not necessary for full power (central hydraulic) brake systems or for vehicles with brake systems designed to work with more than 80 percent of pedal travel.

(4) Brake System—Does not stop vehicle in straight line.

Procedure: With the tire pressure at the manufacturer's specification, test by either procedure (i) or (ii):

(i) Roller-type or drive-on platform procedure: Using either a drive-on platform or a roller-type brake analyzer which can measure equalization, make sure that the forces applied by the front brakes are within 20 percent of each other and that the forces applied by the rear brakes are within 20 percent of each other. Follow the directions of the maker of the test equipment.

(ii) Road test procedure: Drive on a road that is level (not more than one percent grade), dry, smooth, hard-surfaced and free from loose material, oil or grease. Make sure that the vehicle stops from 20 miles per hour within 25 feet staying in a 12-foot-wide lane.

(5) Brake System—Hoses damaged.

Procedure: Look at all the brake hoses to make sure that the hoses do not touch the vehicle's body or chassis and that the hoses are not cracked, chafed or flattened. Do not count a protective device like a "rub ring" as part of the hose or tubing. Examine the front brake

hoses through all wheel positions from full left to right.

(6) Brake System—Drum or rotor too thin.

Procedure: Remove at least one front and one rear wheel and look (measure as needed) to see if the drum diameter and rotor thickness are within the manufacturer's specifications. (Vehicles built after January 1, 1971 and some earlier models have drums embossed with the maximum safe drum diameter dimension and the rotors embossed with the minimum safe rotor thickness dimension.)

(7) Brake System—Lining or pad thickness less than  $\frac{1}{32}$  inch.

Procedure: With at least one front and one rear wheel removed, look to see if the brake linings or pads have cracks or breaks that extend to rivet holes, except minor cracks that do not impair attachment. See if the drum brake linings are securely attached to the brake shoes and the disc brake pads are securely attached to the shoe plate. Measure to see if there is at least one thirty-second of an inch of lining left. (With riveted linings, measure the thickness of the lining over the rivet heads. With bonded linings or pads, measure the lining thickness over the shoe surface at the thinnest point on the lining or pad.)

(8) Brake System—Power unit not operating or leaking.

Procedure: With the engine running, look and listen to make sure vacuum hoses are not collapsed, scraped, broken, improperly mounted or leaking audibly. Stop the engine and apply the service brakes several times to destroy vacuum in the system. Depress the brake pedal with 25 pounds of force and start the engine while maintaining that force. The power assist is defective if the brake pedal does not fall slightly when the engine starts.

(9) Brake System—Structural and mechanical parts damaged.

Procedure: With at least one front and one rear wheel removed, look to see if backing plates and caliper assemblies are deformed or cracked; whether system parts are broken, misaligned, missing, binding or severely worn; and if automatic adjusters and other parts are assembled and installed correctly.

(k) Steering System.—(1) Steering System—Too much free play at steering wheel.

Procedure: With the engine on and the wheels in the straight ahead position, turn the steering wheel in one direction until there is a slight movement of a front wheel. Turn the steering wheel the other way until the same wheel again moves slightly. If you had to turn the



steering wheel more than the distance shown in Table 1, there is excessive lash or free play in the steering system.

Table 1.—Steering System Free Play Values

| (Inches)                |       |
|-------------------------|-------|
| Steering wheel diameter | Lash  |
| 16 or less              | 2     |
| 16                      | 2 1/4 |
| 20                      | 2 1/2 |
| 22                      | 2 3/4 |

(2) *Steering System—Free play linkage more than 1/4 inch.*

*Procedure:* Elevate the front end of the vehicle to load the ball joints. Insure that the wheel bearings are correctly adjusted. Grasp the front and rear of a tire and attempt to turn the tire and wheel assembly left and right. If the free movement of the front or rear tread of the tire exceeds one-quarter inch there is excessive steering linkage play.

Table II.—Toe-in Settings From Vehicle MFR's Service Specifications

| Wheel size (inches) | Nominal tire diameter (inches) | Readings in feet per mile sideslip |      |      |      |        |        |        |       |        |        |
|---------------------|--------------------------------|------------------------------------|------|------|------|--------|--------|--------|-------|--------|--------|
|                     |                                | 1/4"                               | 1/2" | 3/4" | 1"   | 1 1/4" | 1 1/2" | 1 3/4" | 2"    | 2 1/4" | 2 1/2" |
| 13                  | 25.2                           | 13.1                               | 26.2 | 39.3 | 52.4 | 65.5   | 78.6   | 91.7   | 104.8 | 117.9  |        |
| 14                  | 26.4                           | 12.5                               | 25.0 | 37.5 | 50.0 | 62.5   | 75.0   | 87.5   | 100.0 | 112.5  |        |
| 15                  | 28.5                           | 11.5                               | 23.0 | 34.5 | 46.0 | 57.5   | 69.0   | 80.5   | 92.0  | 103.5  |        |
| 16                  | 35.6                           | 9.3                                | 18.6 | 27.9 | 37.2 | 46.5   | 55.8   | 65.1   | 74.4  | 83.7   |        |

(5) *Steering System—Power unit fluid level improper.*

*Procedure:* Examine the fluid reservoir to see that it has enough fluid.

(6) *Steering System—Power unit belts cracked or slipping.*

*Procedure:* Check to see that the pump belts are not cracked or slipping.

(1) *Suspension System.—(1)*

*Suspension System—Ball joint seals damaged.*

*Procedure:* Examine the front and rear suspension parts to make sure that the ball joint seals are not cut or cracked;

(2) *Suspension System—Structural parts bent or damaged.*

*Procedure:* Examine the front and rear suspension parts to make sure that the structural parts are not bent or damaged;

(3) *Suspension system—Stabilizer bar disconnected.*

*Procedure:* Examine the front and rear suspension parts to make sure that the stabilizer bars are connected;

(4) *Suspension System—Spring broken.*

*Procedure:* Examine the front and rear suspension parts to make sure that the springs are not broken or extended by spacers;

(5) *Suspension System—Shock absorber mounting loose.*

(3) *Steering System—Steering gear binds or jams.*

*Procedure:* Turning the steering wheel through the limit of travel in both directions. The wheel should turn freely. Feel for binding or jamming in the steering gear mechanisms.

(4) *Steering System—Front wheels aligned improperly.*

*Procedure:* Toe-in or toe-out must not be greater than 1.5 times the values listed in the vehicle manufacturer's service specification for alignment settings as measured by a bar-type scuff gauge or other toe-in measuring device. Values to convert toe-in readings in inches to scuff gauge readings in feet/mile side-slip for different wheel sizes are provided in Table II. Tire diameters used in computing scuff gauge readings are based on the average maximum tire dimensions of grown tires in service for typical wheel and tire assemblies.

*Procedure:* Examine the front and rear suspension parts to make sure that the shock absorber mountings shackles U-bolts are securely attached;

(6) *Suspension System—Rubber bushings damaged or missing.*

*Procedure:* Examine the front and rear suspension parts to make sure that the rubber bushings are not cracked, extruded out from or missing from suspension joints;

(7) *Suspension System—Radius rod damaged or missing.*

*Procedure:* Examine the front and rear suspension parts to make sure that the radius rods are not missing or damaged.

(8) *Suspension System—Shock absorber leaking or functioning improperly.*

*Procedure:* Look at the shock absorbers to make sure their seals are not leaking (oil on the housing leaking from within). Make sure the vehicle does not rock freely more than two cycles by pushing down on one end of the vehicle, releasing and counting the cycles. Repeat at the other end of the vehicle. Test on a level surface.

(m) *Tires.—(1) Tires—Tread depth less than 1/32 inch.*

*Procedure:* Make sure that the tread on each tire is at least two thirty-seconds of an inch deep. On passenger

cars look for exposed tread depth indicators (check two adjacent major grooves at three points about equally spaced around the tire). On other vehicles, you may have to measure tread depth with a tread gauge.

(2) *Tires—Sizes mismatched.*

*Procedure:* Look to make sure that the tires on each axle are matched in tire size designation, construction and profile, and are not a major deviation in size from the manufacturer's recommendation. (Given on a glove box sign in 1968 or later passenger cars.)

(3) *Tires—Visible damage.*

*Procedure:* Look to make sure that the tires are free from clunking, bumps, knots, or bulges evidencing cord, ply, or tread separation from the casing or other adjacent materials, or use a blunt instrument (to probe cuts or abrasions) to make sure that the tire cords or belting materials are not exposed.

(n) *Wheels.—(1) Wheels—Visible cracks, damage or repairs.*

*Procedure:* Look at the wheels (tire rim, wheel disc, and spider) to make sure that there are no visible cracks, elongated bolt holes, or signs of repair welding. Use a runout gauge and stand to make sure that the lateral and radial runout of each rim bead area is not more than one-eighth of an inch of total indicated runout. (Measure each wheel through a full rotation.)

(2) *Tires—Mounting bolts loose or missing.*

*Procedure:* Make sure all wheel nuts and bolts are in place and tight.

§ 455.7 State Exemptions.

(a) If, upon application to the Commission by an appropriate state agency, the Commission determines, that—

(1) There is a state requirement in effect which applies to any transaction to which this rule applies; and

(2) That state requirement affords an overall level of protection to consumers which is as great as, or greater than, the protection afforded by this Rule; then the Commission's Rule will not be in effect in that state to the extent specified by the Commission in its determination, for as long as the State administers and enforces effectively the state requirement.

(b) Applications for exemption under paragraph (a) of this section should be directed to the Secretary of the Commission. When appropriate, proceedings will be commenced in order to make a determination described in paragraph (a) of this section, and will be conducted in accordance with Subject C of Part 1 of the Commission's Rules of Practice.



**§ 455.8 Severability.**

The provisions of this part are separate and severable from one another. If any provision is determined to be invalid, it is the Commission's intention that the remaining provisions shall continue in effect.

**Appendix to Used Motor Vehicle Trade Regulation Rule**

Under § 455.2(c) of the Used Motor Vehicle Trade Regulation Rule, dealers need only disclose those defects listed in § 455.6 that are known to them at the time of sale. The definition of "knowledge" as used in this Rule is set forth in the text of § 455.2(c). To further illustrate the concept of "knowledge" for purposes of this Rule, the Commission provides the following examples:

**Illustration 1**

At an auction, a used car dealer personally inspects a vehicle prior to purchase and discovers that the manual clutch slips. In this situation, the dealer has knowledge of a defect.

**Illustration 2**

At an auction, a used car dealer making a successful bid is given no opportunity to conduct a personal inspection of the vehicle purchases. Nevertheless, the auctioneer informs the dealer that the manual clutch slips. In this situation, the dealer has knowledge of a defect.

**Illustration 3**

A used car dealer employs an independent appraiser who road tests and visually inspects a vehicle purchased by a dealer and finds that the manual clutch slips. In this situation, the dealer has knowledge of a defect.

**Illustration 4**

A used car dealer employs mechanics who recondition the visual appearance of used cars offered for sale by the dealer. During the reconditioning of a vehicle, one of the dealer's mechanics notices visible leakage from the vehicle's fuel system. In this situation, the dealer will be deemed to have knowledge because the mechanic is an employee of the dealer. If the mechanic fails to report this information to the dealer, and the dealer fails to disclose the defect on the Buyers Guide, the dealer will be held liable for a Rule violation.

**Illustration 5**

A used car dealer performs no inspections on the cars he/she offers for sale. Nevertheless, the dealer sees a trail of radiator coolant left by a car recently driven onto the dealer's lot for purposes of resale. In this situation, the dealer has knowledge of a defect.

**Illustration 6**

A used car dealer performs no inspections on the cars he/she offers for sale. Nevertheless, a consumer trades in one used car for another and informs the dealer that the trade-in had corrective welding of its frame following a 40-mile-per-hour head-on collision with a large truck. In this situation, the dealer has knowledge of a defect.

**Illustration 7**

A used car dealer performs no inspections on the cars he/she offers for sale. Nevertheless, a consumer trades in one used car for another and informs the used car dealer that he/she thinks the ride is "rough." In this situation, the dealer does not have knowledge of a defect.

**Illustration 8**

A used car dealer is told by his mechanics that the right rear door is jammed and will not open. The dealer has no obligation to disclose this fact prior to sale because the condition of the doors is not among those defects that must be disclosed if known.

As with other statutes and rules administered by the Commission, the Commission's staff will provide informal advice interpreting the requirements of this subsection as well as other requirements of the Rule. Further clarification, if necessary, can be obtained from the Commission through an appropriate request for an advisory opinion filed under Part I of the Commission's Rules of Practice.

**REGULATORY ANALYSIS****I. Introduction—Need for and Objectives of the Rule**

This Rule is the result of an extensive Commission investigation into sales practices in the used car industry. Many used car dealers commonly employ several deceptive sales practices which result in substantial economic injury to consumers. These deceptive practices involve oral misrepresentations of the warranty coverage offered and the mechanical condition of used cars at the time of sale.<sup>1</sup> Consumers with little or no information about mechanical condition are assured orally by dealers of the good overall quality of the vehicle they are buying. They rely on dealer oral representations, which generally are not incorporated into sales contracts, and often purchase the vehicle "as is,"<sup>2</sup> believing by direct misrepresentation or by inference that the dealer will correct defects should any be discovered after sale. When defects are discovered soon after sale (within a few days or weeks) the consumer returns to the dealer seeking promised repairs to learn that the sales contract fails to record the seller's oral promises to repair and that the oral assertions of mechanical quality were untrue.<sup>3</sup> Consequently, the consumer faces unanticipated post-sale repair costs which must be considered

part of the true cost of purchasing a used vehicle. Evidence of the deceptive practices was received in written comments and hearings conducted across the country and demonstrates a nation-wide problem. Study data also demonstrates the magnitude of these problems.<sup>4</sup>

These oral misrepresentations widen and exacerbate an information gap which currently exists between sellers and buyers of used cars. Sellers typically discover quite a bit about the cars they sell, while buyers find it difficult or costly to assess a car, particularly as to its mechanical condition. In addition, consumers often do not know the actual coverage of the warranty, if any, which accompanies the car purchased.<sup>5</sup> In particular, many buyers do not understand what is meant by an "as is" sale.<sup>6</sup>

The inequality of knowledge leads to a dilemma which the normal interactions of buyers and sellers cannot solve, the result of which is that the "wrong" mix of cars is currently offered for sale. Some buyers might prefer to buy cars with fewer problems, even at an appropriately higher price. But, in the absence of reliable information about mechanical condition, many buyers cannot tell which car is truly in better condition. Better and worse cars of the same make and model, indistinguishable to consumers, are therefore sold at similar prices. As a result, an owner of a problem-free car may be more reluctant to sell it, since, in the current market, it is so difficult to convince a buyer to pay as much as the car is "worth." Thus, fewer cars in good condition are offered for sale than buyers would prefer to purchase if they were better able to identify the superior cars.<sup>7</sup> This problem particularly afflicts the dealer market.<sup>8</sup>

The Used Car Rule is designed to provide consumers with accurate information prior to the purchase decision concerning the availability and

<sup>1</sup> A sampling of study data follows: Thirty-four percent of buyers report "defects" in their used cars and almost half of these appear within 20 days of purchase. Staff Report at 45-48. About half of used car sales are made "as is". Staff Report at 253. At least 25% of buyers do not know the meaning of an "as is" sale. Staff Report at 262-263. Test shoppers found discrepancies between verbal warranties and written warranties in 34% of the cases in which they actually saw the written warranty. Staff Report at 287. In 75 of 101 cases in which test shoppers reported defects (discovered in diagnostic tests) to dealers, dealers failed to disclose the defects to subsequent shoppers. Staff Report at 35.

<sup>2</sup> Staff Report at 280-90.

<sup>3</sup> Staff Report at 262-65.

<sup>4</sup> For a more complete discussion of this so-called "lemons" phenomenon in the used car market, see the Staff Report at 204-208.

<sup>5</sup> See Section V. A *infra*.

<sup>1</sup> Sale of Used Motor Vehicles, Final Staff Report to the Federal Trade Commission and Proposed Trade Regulation Rule (16 CFR Part 455), Sept. 1978, at 97-130, 283-300 (hereinafter cited as "Staff Report").

<sup>2</sup> An "As Is" sale is one in which the vehicle is sold without any warranty, written or implied.

<sup>3</sup> Report of the Presiding Officer on Proposed Trade Regulation Rule for Sale of Used Motor Vehicles (16 CFR Part 455), May 1978, at 46-47 (hereinafter cited as "Presiding Officer's Report").



scope of warranty coverage as well as accurate information about certain major known defects in cars sold by dealers. This information will be provided in writing in a standardized format on a "Used Car Buyers' Guide" (hereinafter "Buyers Guide") that will be posted on the side window of all used cars offered for sale by dealers.<sup>9</sup> The Commission believes that making information on warranty coverage and certain major known defects available to consumers in writing will reduce oral misrepresentations by dealers and reduce consumer reliance on dealer's oral promises. Point of purchase availability of written warranty and condition information should significantly reduce consumer injury incurred in the form of purchase prices which may not reflect the true condition of the vehicle and unanticipated repair costs which currently results from the deceptive dealer sales practices. Because the Rule will enable consumers to assess more accurately the true costs of ownership, *i.e.*, purchase price plus cost to repair defects, we believe that consumers will have the opportunity to bargain more effectively, choosing cars with the warranty coverage and in the condition that they are willing to pay for.

Increased buyer information about mechanical condition will allocate the costs of repair and inconvenience to those who would not choose to pay the higher price necessary to avoid the risk of repair costs, even when that risk was correctly understood.<sup>10</sup> Thus, in the presence of accurate information about mechanical condition, the difference in price between two otherwise similar cars will reflect the difference in probable repair costs. Buyers can trade off price against mechanical reliability to suit their individual preferences and incomes. Some buyers, particularly those placing a higher premium on the time and expense required to repair malfunctioning vehicles, will choose to purchase vehicles in better condition, despite their higher prices. Others, who might be willing to let a few problems go unrepaired or who are able and prefer to repair their own cars, will tend to purchase less expensive cars despite their awareness that those cars have mechanical drawbacks.

Each section of the Rule will narrow the information gap by providing to the

consumer easily accessible, basic information about defects in the cars, its warranty, and the consumer's legal rights in a used car transaction. We believe that such increased information will cause the mix of cars available in the used car market to change to match more closely the assortment which used car buyers would like to find. We would expect that since better quality cars will be more easily identified as such, these cars will command higher prices, and therefore that more of these better cars will be made available to dealers and thus are likely to be offered for sale by dealers.

To accomplish these goals, the Rule incorporates six disclosures in the Buyers Guide which dealers are required to post on all used cars offered for sale. Those six components are:

1. *Warranty Disclosure.* This section provides a summary of the warranty benefits offered. It indicates the systems covered, length of coverage for each system, and percentage of repair costs paid by the dealer. It also shows whether a service contract is available, and at what price.

2. *"As is" Disclosure.* This disclosure defines the terms "as is" and provides a box for the dealers to check if the vehicle is sold "as is."

3. *Disclosure of Known Defects.* Space is provided for dealers to list specific major defects of which they have knowledge. The list of defects that must be disclosed if known is included on the back of the sticker.

4. *Spoken Promises Warning.* A boldface statement warns consumers that unless oral promises are put in writing, they are difficult to enforce.

5. *Pre-Purchase Inspection.* This section suggests to the buyer that he or she inquire about the possibility of a third-party inspection.

6. *List of Mechanical Systems.* The sticker includes a list of 14 major mechanical and safety systems, and invites consumers to inquire about warranty coverage and the current condition of those systems.

The Commission believes the final Rule is a cost-effective approach to address the abuses in the used car market as documented on the rulemaking record. Each component of the Rule discloses information that the Commission judges vital to a well informed purchase decision. In Section II of this Regulatory Analysis we shall set forth a brief history of the rulemaking proceeding from which the Used Motor Vehicle Trade Regulation Rule evolved. In Section III, we shall analyze each element of the Rule, its benefits and costs, and how it addresses problems identified in the rulemaking

record. In Section IV we shall discuss and analyze various regulatory alternatives considered by the Commission. Section V considers several additional economic issues mentioned by various commentators on the record. Section VI summarizes the legal theory underlying the Used Car Rule.

## II. History of the Proceeding

In 1973, the Seattle Regional Office of the FTC began an investigation into sales practices in the used car industry. As a result of that investigation the Commission directed the Bureau of Consumer Protection to conduct an initial investigation into the used car industry and make recommendations regarding the need for a trade regulation rule proceeding. The Commission was also carrying forth a congressional mandate in Section 109(b) of the Magnuson-Moss Warranty Act that the Commission initiate rulemaking proceedings with regard to the used car industry by January 1976.

The Bureau of Consumer Protection completed its initial report to the Commission in December 1975, and the Commission instituted rulemaking proceedings by notice in the *Federal Register* on January 6, 1976. Those proceedings included hearings held at six locations across the country in 1976 and 1977. A staff report and presiding officer's report summarizing the rulemaking proceedings were placed on the public record in late 1978. In the Final Staff Report, the staff recommended that the Commission adopt a rule mandating inspections of all used cars sold by dealers, with inspection results to be disclosed on a window sticker bearing "OK" or "Not OK" checks for the major mechanical systems and subsystems of a car. In July 1979, the Bureau of Consumer Protection Director raised an alternative to the mandatory inspection and disclosure rule proposed by the staff. That alternative would have provided dealers the option not to inspect, as long as the dealer informed the consumer that no inspection was made by checking a third column on the window sticker, "No Promises". On September 25, 1979, the Commission heard oral arguments by industry members and consumer groups concerning both the staff's and the Bureau Director's recommendations. At an open meeting on October 11, 1979, the Commission rejected the staff's mandatory inspection approach and directed the staff to further analyze the alternative of an optional inspection rule. On May 16, 1980, the Commission voted to tentatively adopt an optional

<sup>9</sup> The Used Car Buyers Guide is appended as Attachment A.

<sup>10</sup> Of course, no buyer likes to pay for repairs, and higher income buyers are better able to pay more to avoid the risks of repair costs. But two buyers with similar incomes—whether high or low—may differ in how much each would be willing to pay to avoid post-purchase repairs.



inspection rule, and voted to include in the rule the requirement that known defects be disclosed. The Commission also determined to solicit technical comments on certain drafting and remedial aspects of the tentatively adopted rule. The technical comment period extended from publication of a notice in the *Federal Register* on August 7, 1980, to November 7, 1980. Following its assessment of those comments, on January 16, 1981, staff transmitted to the Commission its recommendation to adopt an optional inspection rule. On April 14, 1981, at an open meeting, the Commission rejected the staff's recommendation and in its place voted to adopt a rule requiring disclosure of warranty coverage and of certain known mechanical defects.<sup>11</sup> That rule was promulgated by the Commission on \_\_\_\_\_, 1981.

### III. Analysis of the Used Car Rule—Projected Benefits, Costs, and Effects

As set forth earlier, the Rule comprises six components—three affirmative disclosure requirements relating to the specific vehicle (disclosures of warranty information, the meaning of an "As Is" sale, and certain major known defects) and three other general information disclosures (a spoken promises warning, a major systems list, and a pre-purchase inspection notice). Each element is designed to remedy particular abuses reflected in the rulemaking record and thus, to a certain extent, is segregable from the whole for the purposes of analyzing projected benefits, costs and effects of the Rule.

However, certain of the projected benefits and cost may not be readily segregable, and therefore are more appropriately attributable to the Rule as a whole, rather than to any particular element of the Rule. For example, the Commission expects that the disclosures required by the Rule will reduce dealer misrepresentations, consumer reliance on such misrepresentations, and the consumer injury that occurs from paying unexpected repair cost and prices that fail to reflect the true condition of the vehicle. Such benefits are likely to arise from the impact on the market of the entire Rule, rather than from the impact of any one particular element.

The direct cost of providing used car information required under the Rule is minimal. The dealer need only obtain the Buyers Guide forms, and complete them with readily available information. The Rule would not prevent any car, with or without any warranty, in any

condition, from being sold. Seen from this perspective, the costs of the Used Car Rule, insofar as it functions as a disclosure device, are minimal.

We now proceed to an analysis of each component of the Rule individually.

#### A. Disclosure of Availability and Scope of Warranty Coverage.

The Rule addresses dealer practices that deceive consumers and create consumer confusion with respect to warranty coverage and service contract terms.<sup>12</sup> The record clearly demonstrates that dealers orally misrepresent the terms of written warranties and service contracts.<sup>13</sup> In some cases, salespersons deceptively refer to "good warranty" or "full guarantee" when the warranty coverage offered is severely limited.<sup>14</sup> The allocation of repair responsibility and the duration of the warranty are often misstated.<sup>15</sup> In addition, warranty information may not be available for use in the consumer's purchasing decision since warranty terms are often not made known to consumers until after they have decided to purchase.<sup>16</sup> For example, results from one study showed that warranty documents "failed to describe the items that the dealer would repair in 24% of the cases; the dealer's share of the repair cost was not disclosed 19% of the time."<sup>17</sup> Another study found discrepancies between the verbal and written warranty in 34% of the cases where test shoppers actually saw the warranty.<sup>18</sup>

The warranty disclosure adopted by the Commission addresses these problems. The shopper will be able to readily ascertain which mechanical systems are warranted, for how long, and how costs of repair will be allocated between the buyer and the used car dealer.

1. *Benefits.* The Rule is designed to provide consumers with pre-sale disclosures of material information regarding warranties at a time prior to the closing of the sales contract. The Commission believes that clear and accurate disclosures of post-sale repair responsibilities at the point of purchase will provide an effective remedy for the consumer injury resulting from dealer

misrepresentations of warranty coverage.

If consumers have accurate knowledge of what the dealer will pay in case the consumer encounters problems after the sale, unanticipated repair costs and the consumer injury that results therefrom should be reduced. With warranty information available at the point of sale, the consumer will be better able to make accurate assessments of the probable ownership costs (purchase price plus repair costs) of a car prior to making a purchase decision.<sup>19</sup>

The window sticker will provide consumers with an additional source of information on warranty coverage which they can use as a check against which to measure any oral representations by the dealer about the warranty. With the disclosure on the window sticker, consumers can compare the terms of the written warranty document. Thus, the Commission believes dealers will be less likely to misrepresent warranty coverage as consumer reliance on any oral warranty promises is reduced.

Disclosure of warranty terms also provides another sort of benefit. The terms of the warranty will frequently provide information to the consumer about the condition of the car, since consumers are likely to use the strength of the car's warranty as a signal indicating the dealer's evaluation of the car's mechanical condition. For example, a strong warranty may signal the consumer that the dealer has confidence in the condition of the car. On the other hand, a warranty that does not cover the brake system may lead a shopper to question the condition of the brakes.<sup>20</sup> In general, the lack of a strong warranty may serve to arouse buyer suspicions concerning mechanical condition and may encourage some buyers to seek third-party inspections.

Warranty disclosures made early in the transaction thus will make it possible for consumers to use warranty information to weigh the relative importance of the warranty coverage, the condition of the car, and the price they are willing to pay for it. However, to be used effectively, such disclosures must be made available at a time prior

<sup>12</sup> Staff Report at 280-90.

<sup>13</sup> *Id.* at 303-05.

<sup>14</sup> Presiding Officer's Report at 35.

<sup>15</sup> Staff Report at 284. The Survey Research Laboratory ("SRL") Study, *Beliefs and Experiences of Dissatisfied Purchasers of Used Motor Vehicles*, demonstrates a high percentage of confusion over the dealer's share of repair costs. HX 160(A) at Appendix C, Question 23 A and B.

<sup>16</sup> Staff Report at 282.

<sup>17</sup> *Id.* at 284.

<sup>18</sup> *Id.* at 287.

<sup>19</sup> The record indicates that some buyers do bargain over warranty coverage. Although the magnitude of such bargaining efforts is difficult to determine, the Commission expects it to increase when buyers have more accurate information about the warranty being offered. *Id.* at 301.

<sup>20</sup> The list of major systems which is set forth on the Buyers Guide should provide the shopper with a context in which to evaluate the warranty coverage offered on any given car. See the discussion at Section III. D. 3. *infra*.

<sup>11</sup> Commissioner Pertschuk would have favored an approach emphasizing inspections.



to the signing of the sales contract. If warranty information is not available until late in the transaction, the buyer has little opportunity to utilize the information which the terms of the warranty convey. There is little chance for the final agreement between buyer and seller to reflect the buyer's desire for specific warranty terms or the relative value he or she attaches to warranty coverage, condition of car, and price.

We believe that the availability of warranty information early in the bargaining process should increase consumers' ability to bargain for the terms they desire. This should intensify the pressure on dealers to compete on the basis of the terms of the warranty whenever (and to the extent that) consumers are willing to pay for them. With more equal sharing of information between buyers and sellers, market forces will be able to work more efficiently to determine the nature of the warranty terms offered.

Of course, to be useful to consumers, the disclosure information must be easily understandable. Tests of the comprehensibility of the disclosures on the window stickers have shown them to be remarkably clear. Focus group tests by Market Facts, Inc., testing two versions of a form very similar to the one required by the Rule, found that respondents could use the Buyers Guide to determine whether the car had a warranty, what systems were covered, and the length of the warranty.<sup>21</sup> This study suggests that the Buyers Guide will increase consumer certainty as to the warranty coverage offered on a car.

An additional benefit to both buyers and sellers may be reduced litigation costs. Disclosure of warranty terms will provide clear written information about the buyer's rights; a clearer written contract is likely to reduce the impact of oral promises. The Commission thus expects that there will be a reduction in

disputes over oral promises. In these cases where disputes occur, sellers may be more willing to settle disputes and buyers may be less likely to bring actions for unenforceable oral promises. This should result in a more efficient dispute settlement system.

The Commission believes that clear and conspicuous disclosures of information concerning the availability and scope of warranty coverage is likely to have substantial benefits, given the misrepresentations and resulting consumer injury demonstrated in the market. We expect reductions in consumer reliance on such oral (and generally unenforceable) warranty promises and in unanticipated repair costs for consumers.

**2. Costs.** The Commission believes that the direct costs of warranty disclosure will consist of the printing, filling out and posting of the Buyers Guide. The Rule itself requires no change in the offering or scope of warranties. Dealers may still sell "as is" or offer a warranty. The Rule only requires that dealers conspicuously disclose the terms of a warranty, if offered, or the fact that the sale is "as is." Thus, the direct costs of the Rule will be minimal.

Some indirect costs may result from warranty disclosure. As warranty disclosures become common, competitive pressures may encourage dealers to increase warranty coverage. In that event, dealers may incur additional post-sale repair costs. Presumably, dealers will not offer warranties with more protection than that for which consumers are willing to pay. Thus, to the extent warranty coverage and therefore post-sale repair costs do increase, such costs will be imposed by consumer demand in the market, not by the Rule.

In our judgment, the projected costs of these disclosures will impose minimal burdens on the industry, while significant benefits will accrue to consumers. We therefore believe that the warranty disclosure requirements will be cost-effective.

#### B. "As Is" Sales.

The Rule would require dealers to check an "as is" box on the Buyers Guide when they sell a vehicle with no warranty. Next to the box will be a simple statement explaining the meaning of an "as is" sale.

The record reveals a great deal of confusion on the part of consumers with respect to the meaning of "as is" sales:

Undoubtedly the most needed disclosure proposed in this proceeding involves "As Is" sales. . . . The record is replete with testimony as to the lack of understanding on

the part of consumers of the meaning and effect of this term in a sales contract.<sup>22</sup>

Data from three studies on the record show that at least 25 percent, and perhaps as many as 59 percent, of buyers cannot correctly describe an "as is" sale.<sup>23</sup>

In addition, the record indicates that the "as is" nature of a transaction is not usually disclosed, if it is disclosed at all, until the sale is about to be made.<sup>24</sup> Some "as is" disclosures are couched in complex legalistic terms.<sup>25</sup> In addition, some dealers will make oral promises to repair problems that arise after sale, even though the sale is made on an "as is" basis.<sup>26</sup> Many buyers, even when aware that a sale is "as is", still believe the seller has a legal responsibility to make post-sale repairs.<sup>27</sup>

**1. Benefits.** The Commission believes the "as is" disclosure will assist in reducing the documented widespread ignorance and misunderstandings with respect to "as is" sales.

The benefits of a clear "as is" disclosure are similar to those benefits resulting from warranty disclosure. Because the disclosure will set out the significance of an "as is" sale, we expect that it will reduce consumer reliance on oral promises to repair problems that arise after sale. We also expect a concomitant reduction in dealer oral misrepresentations that a warranty is provided since consumers will be able to use the disclosures on the Buyers Guide to evaluate contradictory dealer oral promises. A related benefit of the "as is" disclosure is the disincentive it provides for dealers to represent that a particular component is in good condition or that the car in general is in good condition in light of the lack of warranty coverage.

Tests of the comprehensibility of the "as is" disclosure have indicated that consumers understand the disclosure and will use it in making purchase decisions.<sup>28</sup>

It is possible that some dealers may decide to offer a limited warranty on one or more non-essential systems rather than sell the car "as is" and check the "as is" box on the Buyers Guide. However, we would not be concerned if

<sup>21</sup> Presiding Officer's Report at 79, 163.

<sup>22</sup> Staff Report at 262-263.

<sup>23</sup> *Id.* at 266-67. In some cases it is never disclosed. At 271.

<sup>24</sup> *Id.* at 268.

<sup>25</sup> *Id.* at 275. Many of these promises may be honored. Nevertheless, the "as is" disclosure, together with the spoken promises warning, will inform consumers that such promises are noncontractual and legally unenforceable.

<sup>26</sup> *Id.* at 263.

<sup>27</sup> See n. 21, and accompanying text *supra*.

<sup>28</sup> As directed by the Commission, this study was conducted in May, 1981, under a staff contract in order to test whether the Buyers Guide, as revised in accordance with the Rule changes approved by the Commission on April 14, 1981, would communicate information to consumers.

Previously, the staff had contracted for two studies which tested earlier versions of the Buyers Guide developed during the Commission's consideration of an optional inspection rule. Focus group testing conducted by Hollander & Associates in August, 1980, indicated some confusion with parts of the form, including the relationship between the mechanical condition checklist and the warranty disclosures. After redesigning the Buyers Guide, the staff contracted with the Public Communications Center in December 1980, to perform mail intercept and focus group tests. In those tests, respondents understood the warranty information provided by the form and found the meaning of "as is" to be very clear. PCC Study, Tables 2, 3, 4, 8, and 17.



this should occur. As long as the disclosures on the Buyers Guide accurately reflect the warranty coverage, the consumer who receives such a limited warranty will be able to assess the value of the warranty in determining whether or not to purchase the car. Any detriment to the consumer in receiving such a limited warranty will be diminished by the fact that the Buyers Guide disclosures will inform the consumer of the limited scope of the warranty by placing it within a context of systems that could be covered by a warranty.<sup>29</sup>

2. *Costs.* The direct costs associated with "as is" disclosure are minimal. The check box and definition will be printed on the Buyers Guide adjacent to the warranty disclosure section. The dealer must merely check the box if the car is sold on an "as is" basis. Thus, essentially no costs will be imposed beyond those already incurred in posting the window sticker.

#### C. Disclosure of Major Known Defects.

The Rule requires dealers to disclose certain major known defects on the cars they offer for sale. The Rule limits those defects that must be disclosed, if known, and states that a dealer has knowledge if "you or your agent or employer have obtained facts or information about the condition of a vehicle (e.g., through an inspection, from a previous owner, from the salesperson at an auction) which would lead a reasonable person in similar circumstances to believe that the car contained one or more defects as defined in § 455.6 of this Rule".<sup>30</sup>

Dealers acquire a great deal of information regarding the mechanical condition of vehicles they sell. They obtain this knowledge of defects from various sources, including inspections both before and after acquisition (through trade-ins, auctions and private purchases). After purchase, dealers are apt to discover additional defects during further inspections, appearance reconditioning and repairs in preparation of vehicles for resale. In

addition, dealers also become aware of defects through inspectors for service contract companies who examine cars for defects when deciding which cars qualify for the service. Dealers may also become aware of defects through sellers and through their own personal experience in selling or servicing a car previously.<sup>31</sup>

Despite this knowledge of defects, dealers often make overt misrepresentations regarding the mechanical condition of cars offered for sale and also deceive consumers by remaining silent regarding major mechanical defects they know to exist.<sup>32</sup> In one study, dealers actually were given the results of independent third-party inspections but consistently failed to convey that information to prospective purchasers.<sup>33</sup> Consumers are not told of defects existing in cars at the time of sale and subsequently must bear the unanticipated costs of repairs.<sup>34</sup> Sellers, those most likely to have reliable information about the condition of the cars they offer for sale, currently have insufficient incentives to disclose the information fully and accurately.

1. *Benefits.* The benefits of disclosing known defects are analogous to the benefits of information disclosure in general. This disclosure is likely to increase the number of higher quality vehicles available for sale by dealers—as vehicles in sound mechanical condition command a premium price. In addition, vehicles in poor condition are more likely to be sold to consumers able and/or willing to cope with defects.<sup>35</sup>

With information available about certain major defects known to the dealer, consumers will be able to assess more accurately the true costs of ownership, i.e., purchase price plus repair costs for defects. Their purchasing decisions can incorporate consideration of a car's condition and expected future repair costs, and thus consumer injury resulting from unanticipated repair costs should be reduced. We anticipate that more accurate knowledge about the true condition of a car will also allow the consumer to assess more accurately the value of warranty coverage and will increase bargaining for desired warranty coverage and price on a car of known condition. Evidence from the Wisconsin Study<sup>36</sup> suggests consumers

are least likely to be aware of mechanical defects such as those involving the transmission, brakes, exhaust system, etc., before purchase and most likely to discover these defects after purchase. In that study, when consumers became aware of defects prior to purchase, many felt such awareness did enhance their ability to bargain. Dealers were most likely to respond by repairing the defects or reducing the price of the car.

If required to disclose certain major known defects prior to purchase, dealers will find it more difficult to make deceptive claims contrary to the written condition information. Consumers will have an additional source of information against which to check oral promises by dealers. This should reduce oral misrepresentation by dealers regarding the condition of cars at the time of sale.

While the market may currently provide some rewards to honest dealers in the form of enhanced reputation, there are frequently disincentives for dealers to disclose known defects on poor quality cars, since such disclosures by honest dealers may result in a loss of business to those dealers who falsely praise the condition of the vehicle. However, we expect that the Rule, and in particular the provision for civil penalties of up to \$10,000 for Rule violations, will change the incentive structure. Since all dealers will be under the same disclosure obligation, the disclosure of known defects required by the rule will encourage the honest dealer to reveal the existence of known defects while discouraging dishonest dealers from selling cars in comparable condition without disclosing defects.

The Commission is aware of the argument that some dishonest dealers may purposefully fail to comply with the rule's requirement to disclose major known defects by contending that they lacked knowledge of the defect. Although Wisconsin's mandatory inspection and disclosure law is not a perfect analogue to the Commission's Rule, it is worthy to note that under the Wisconsin law, more buyers received pre-purchase defect information from dealers.<sup>37</sup> We thus expect that dealers

*Market: An Evaluation of Disclosure and Regulation.* HX 104(A), at 26-27. Tables IV-13, IV-14.

<sup>37</sup> The Wisconsin Study indicates that 28.1% of pre-law buyers who bought from dealers who were aware of defects prior to purchase. This percentage increased to 38.7% among those who purchased from dealers following passage of the mandatory inspection law. HX 104(A) at Table IV-12. This increase in defect awareness was accompanied by an increase in the number of buyers who stated that their knowledge of defects came from information

<sup>29</sup> The list of major systems will be particularly useful in providing a context for the evaluation of warranty coverage.

<sup>30</sup> Section 455.2(c). The list of defects set forth in Section 455.6 of the rule is summarized on the back of the Buyers Guide. The non-safety items on the list were adapted from the list of systems and subsystems that are required to be inspected under the state of Wisconsin's used car inspection law, MVD 24. The safety-related defects derive from the model state inspection standards developed by the Department of Transportation. The defect list was included in earlier staff drafts of the Rule, and was available for cross-examination during the hearings. The record demonstrates that mechanics can use the list to determine whether the car contains one or more defective components. See Staff Report at 141-160.

<sup>31</sup> *Id.* at 71-83.

<sup>32</sup> *Id.* at 97-130.

<sup>33</sup> California Public Interest Research Group, *A CALPIRG Study: Practices in the Used Motor Vehicle Industry*, HX 82 at 11-12.

<sup>34</sup> Staff Report at 38-57; 110-128.

<sup>35</sup> See text at nn. 7-8, 10 *supra*.

<sup>36</sup> Center for Public Representation, *An Investigation of the Retail Used Motor Vehicle*

Continued



obligated to disclose defects under the Rule will do so, especially since failure to comply with the requirement may be enforced by fines up to \$10,000 for each separate violation. Moreover, we believe that consumers will come to expect some defect disclosures or indications that repairs have been made. Therefore, the market itself will generate incentives for dealers to disclose known defects.

In sum, requiring dealers to disclose known defects will enable consumers to obtain information without which they cannot evaluate the true worth of cars they are considering for purchase. This additional source of information will reduce consumer reliance on dealers' oral representations. Thus, to the extent that dealers are currently either silent about defects or overtly misrepresent the condition of cars, consumers should have the opportunity to be more accurately informed about the actual condition of cars, with a concomitant reduction in consumer injury resulting from unanticipated repairs after purchase.

2. *Costs.* There are minimal costs to dealers associated with the disclosure of known defects. Dealers will not incur any direct costs other than the minimal costs associated with filling in and posting the Used Car Buyer's Guide. Dealers are under no obligation to inspect vehicles to discover defects. They are merely required to disclose any of the specified defects about which they have knowledge obtained in the ordinary course of their business.

Evidence from the Wisconsin Study suggests that after implementation of a mandatory inspection and disclosure law in that state, even though dealer inspections did not increase substantially,<sup>38</sup> dealer disclosure of defects did increase significantly.<sup>39</sup> This evidence suggests that dealers did not simply begin to inspect more frequently or more thoroughly and thus begin to find more defects, but instead they began to disclose more defects about which they already knew. The Rule is

not designed to require dealers to obtain more information on the condition of the cars they sell, but rather to disclose to consumers the information they already have.<sup>40</sup> If dealers do begin to inspect more frequently or thoroughly following implementation of the Rule, it can only be as a result of consumers demanding more information on defects prior to purchase. Thus, any increased costs to dealers resulting from increased inspections will be imposed by the market, not by the rule, and such activities will not be undertaken by dealers unless consumers are willing to pay for them.

It is possible that dealers will incur some indirect costs as a result of the requirement to disclose known defects. Dealers may begin to make repairs to defective systems in order to avoid disclosing defects. Dealers are likely to repair only those defects which cost less to repair than the reduction in price required to sell a car with a particular defect disclosed. Whether this occurs will depend on the consumer demand. Moreover, some dealers may repair defects rather than risk what they may believe to be the negative connotations associated with defect disclosure. Presumably dealers will not make such repairs unless consumers are willing to pay for them. Thus, any increase in repairs by dealers will be the result of the effect of the freer flow of information on condition of cars in the marketplace.<sup>41</sup>

The Commission believes that requiring the affirmative disclosure of major known defects at the point of purchase will remedy the deceptive practice established by the record of dealer failure to disclose known defects. On balance, the Commission believes the benefits of this disclosure requirement exceed the costs.

#### D. General Information Disclosures.

The Rule requires the disclosure of

<sup>38</sup> The requirement to disclose known defects is not open-ended but is confined to those items (and conditions) specified in Section 455.6 of the Rule. Although these criteria have been criticized by some participants on the grounds of vagueness, see, e.g., Staff Report at 157, n.202; NADA, S-738-NADA, T-740, these criteria, which have been extant proposals since the outset of this proceeding, provide concrete standards for determining the existence of a defect. See note 36 *supra*. Dealers in Wisconsin, whose state inspection regulation served as the basis for the inclusion of the items specified in Section 435.6(a)-(h), testified that they were able to apply those standards. Staff Report at 157-159 and nn. 203-206. We believe, therefore, that the obligation to disclose known defects is sufficiently precise that dealers will not be forced to overdisclose because of significant ambiguity in the definition of "defect".

<sup>41</sup> Moreover, the repairs are generally more efficiently undertaken by dealers, particularly those with in-house mechanics, rather than by consumers.

information on three additional aspects of the transaction: a spoken promises warning, a pre-purchase inspection opportunity notice, and a list of major mechanical systems. These are to be posted as part of the Buyers Guide. The impact of each of the three disclosures is analyzed separately.

1. *Spoken Promises Warning.* The following notice appears at the top of the Buyers Guide:

**Important.**—Spoken promises are difficult to enforce. Ask the dealer to put all promises in writing. Keep this form.

The record demonstrates that many dealers orally misrepresent both the mechanical condition of used cars and the dealer's after-sale repair responsibility.<sup>42</sup> The record also demonstrates that consumers rely on oral statements made by dealers at the point of purchase even though those oral statements are not confirmed in writing.<sup>43</sup> Further, discrepancies between oral representations of warranty coverage and written warranty terms are commonplace.<sup>44</sup> In the face of consumer reliance on oral promises, dealers continue to make affirmative misrepresentations regarding their used cars' warranty coverage and mechanical condition. Consumers are therefore frequently deceived at the point of purchase by representations which are not only untrue but also unenforceable. The Commission believes the record contains substantial justification for requiring a warning to consumers that all oral promises should be confirmed in writing. Inclusion of a spoken promises warning would alert consumers to beware of reliance on dealers' oral representations.

a. *Benefits.* The Commission believes that a spoken promises warning will contribute to a reduction in oral misrepresentations of mechanical condition and warranty coverage by dealers and, in conjunction with the other disclosures on the Buyers Guide, assist in deterring deception. The level of misrepresentation at the used car lot will be reduced if consumers are informed of the need to secure a written record of all statements made in conjunction with a used car sale. If consumers do in fact ask dealers to confirm their promises in writing, making them available in case of disputes and enforceable in court, dealers are likely to be more reluctant than they are at present to make false or misleading statements.

<sup>42</sup> Staff Report at 103-130; 282-90; 295-315.

<sup>43</sup> *Id.* at 108-110; 274-77.

<sup>44</sup> *Id.*

supplied by the dealer. In the Wisconsin Study, 1% of pre-law respondents said that they learned of defects before purchase from dealers. In the post-law sample, 9% said they learned of defects before purchase from dealers. Computed from data in HX 164(A). See also Staff Report at 122.

It is important to note that there are important differences between the Commission's Rule and the Wisconsin law. Dealers in Wisconsin must inspect and check either "OK" or "Not OK" for each system and subsystem listed on a disclosure statement. It could be argued that dealers in Wisconsin have some incentive to check "Not OK," thereby disclosing known defects, since an "OK" check may carry post-sale repair responsibilities for the dealer.

<sup>38</sup> Staff Report at 228-229.

<sup>39</sup> *Id.* at 122. See note *supra*.



At the same time, the introduction of this information into the used car market should lead to a decrease in consumer reliance on oral statements and an increased insistence by consumers on written confirmation of all representations made at the time of sale. Such written confirmation of representations should reduce ambiguity and/or misunderstanding between buyer and seller as to whether or not a promise was made. With promises regarding mechanical condition and warranty coverage in writing, the consumer will have an additional means of checking the representations made in any warranty or service contract document and can check the statements against the results of an independent inspection, if one is performed. Additional sources of information decrease the necessity of consumers relying exclusively on the oral promises of dealers.

If consumers are able to obtain written confirmation on the Buyers Guide of oral statements made by dealers at the time of sale, these statements become part of the sales contract and can be used in the event of later disputes between buyers and sellers. Having dealer promises in writing should increase the ease of enforceability of these promises and thus decrease the need for post-sale litigation to enforce oral promises.

b. *Costs.* The printing costs, as described above, again are minimal since the spoken promises warning will appear on every Buyers Guide printed for the dealer.

2. *Pre-Purchase Inspection Notice.* The Buyers Guide contains a notice suggesting that buyers ask dealers about their policies regarding independent pre-purchase inspections:

Ask the dealer if you may have this car inspected by your mechanic either on or off the lot.

Although pre-purchase inspection by a third party can provide consumers with important information regarding the mechanical condition of a used car, the record demonstrates that few consumers actually seek independent inspections by a qualified mechanic.<sup>45</sup> This circumstance may be attributed to dealer policies which disallow such inspections and to factors which inhibit consumers from seeking inspections.<sup>46</sup>

rely on dealer representations that their cars are in sound mechanical conditions and thus do not perceive a need to obtain an independent pre-purchase inspection.<sup>47</sup>

a. *Benefits.* The notice of availability of independent third-party inspections will generate several benefits for consumers and dealers. For consumers, a disclosure of the dealer's policy concerning independent inspections informs consumers that independent inspection is one means of corroborating dealer oral statements regarding mechanical condition. In addition, the disclosure alerts consumers to the fact that independent inspection is a valuable means of determining the condition of the used car at the time of sale. Nevertheless, the decision to allow such inspections will remain voluntary for the dealer; the notice will simply alert consumers to a possible opportunity. Any effects which flow from dealers' decisions to extend this opportunity will be the result of consumer demand and dealers' responses.

If the notice does, in fact, encourage consumers to obtain independent inspections, this may reduce consumer reliance on dealer-controlled information. If, as a result of third-party inspections, buyers find a discrepancy between the results of an independent evaluation and the condition reported by the dealer, buyers will have enhanced their bargaining position with respect to the dealer.<sup>48</sup> On the other hand, the possibility of independent inspections may provide dealers with a disincentive to orally misrepresent mechanical condition in light of the risk that the consumer could discover misrepresentations as a result of third-party evaluations.

The notice not only focuses consumers' attention on the idea of pre-purchase inspection as a means of evaluating a car's mechanical condition but also provides consumers with a means of comparison shopping among the various terms and conditions offered by different used car dealers. This possibility may also provide benefits to dealers. Some dealers may make the availability of independent inspections a component of their marketing strategy. Their willingness to allow third-party inspections could provide consumers with information on the trustworthiness

of the dealer. The notice may thus provide dealers with a way of communicating to consumers that their representations are trustworthy and will withstand the test of comparison with a third-party evaluation.<sup>49</sup>

b. *Costs.* There are no direct costs associated with this disclosure. As with the spoken promises warning, the notice of availability of pre-purchase inspection is to be pre-printed on the Used Car Buyer's Guide.

There may be some indirect costs resulting from disclosure of independent inspection opportunity. If, as a result of the disclosure, consumers begin to value independent off-premises inspections and begin to demand such inspections, dealers may incur additional costs. These costs may include the costs of increased insurance premiums and employee time to accompany vehicles off the premises to safeguard against misuse or theft and the cost of foregone opportunities to show cars to other prospective buyers while the cars are off the lot. Dealers would presumably pass along to consumers any increased costs of this sort and would only offer the opportunity for third-party inspections if, and to the extent that, consumers were willing to pay a price which would allow the dealers to cover those costs. Any costs of this sort would thus be imposed on dealers by the market, not by the rule.

3. *List of Major Systems.* The Buyer's Guide also contains a pre-printed list of 14 major mechanical and safety systems of a car. A notice urges buyers to "ask about the current condition" of these systems and to examine the form to determine the extent of warranty coverage and known defects. The list of systems includes all major mechanical components of an automobile.

The record shows that dealer misrepresentations concerning mechanical condition are often made on a system-by-system basis.<sup>50</sup> The components listed are those most likely to be represented by dealers as being in good condition but without any confirmation of such representations in writing.<sup>51</sup>

a. *Benefits.* The list of major mechanical systems identifies for consumers the important systems on which they may want to seek mechanical condition information, either from the dealer or through an independent inspection. Furthermore,

<sup>45</sup> *Id.* at 93-94.

<sup>46</sup> *Id.* at 87-98, n. 81. One practice that discourages independent pre-purchase inspection is "detailing". The practice of "detailing" involves cleaning and cosmetically reconditioning cars without necessarily making mechanical or safety repairs. *Id.* at 97-103. Consumers who equate appearance with performance do not believe that independent, pre-purchase inspections are necessary.

<sup>47</sup> *Id.* at 103-130.

<sup>48</sup> Indeed, the Commission's expectation is that, under these circumstances, the consumer will either: (1) demand warranty coverage for the discrepancy; (2) negotiate a reduced price; (3) having read the "spoken promises" warning, demand that the dealer reduce oral statements to writing; or (4) decide not to do business with the dealer.

<sup>49</sup> This is particularly significant since there are currently few mechanisms that dealers can use to demonstrate their trustworthiness to consumers and thus inspire consumer confidence.

<sup>50</sup> *Id.* at 109-115.

<sup>51</sup> *Id.*



the list will enable consumers to evaluate which systems are covered by any warranties offered by the dealer. The list may also prompt consumers to seek information on costs to repair systems not in good order.

The record demonstrates that consumers are most interested in the condition of the car at the time of sale but are discouraged from inspecting mechanical condition as a result of dealer practices.<sup>32</sup> Highlighting the importance of mechanical systems may lead consumers to focus on them somewhat more specifically. As consumers begin to be more astute and critical, dealers' marketing incentives may shift away from cosmetic pre-sale reconditioning to remedying mechanical condition factors.

Thus, the list of systems will provide consumers with a framework for systematically evaluating and comparing the mechanical condition and warranty coverage offered between cars and dealers. The increased availability of information to consumers should also contribute to a reduction in the incidence of unanticipated repair costs by consumers.

b. *Costs.* The listing of major mechanical systems will not lead to any direct costs to dealers since it will be pre-printed on the Used Car Buyer's Guide.

#### E. Summary

The Commission believes that each of the elements of the Rule will diminish the deceptive practices currently existing in the used car market. We expect that the elements of the rule, taken together, will provide significant benefits while imposing only minimal direct costs. Any indirect costs that might result from the rule would result from dealer attempts to satisfy consumer demand and, therefore, by definition would be justified by significant benefits.

#### IV. Alternatives Considered

During the course of this proceeding, both the Commission and staff have considered several alternatives to the current Rule. Each of the variations has involved warranty disclosure, including an explanation of "as is" sales, a list of major mechanical systems, a disclosure of known defects, and a spoken promise warning. The record contains ample evidence to support each of these features in any rule designed to address the problems of oral misrepresentation of warranty terms and condition of cars

offered for sale and consumer reliance on spoken promises which together lead to consumers' experiencing unanticipated repair costs following purchase.<sup>33</sup>

The options considered differ principally in how they treat the issues of inspection and the disclosure of additional information on the condition of the cars. Those alternatives were:

1. Mandatory inspection.
2. Optional inspection.
3. Mandatory Third-Party Inspection.
4. Cooling-off Period.
5. Disclosure of Prior Use.
6. Disclosure of Odometer Accuracy.
7. Disclosure of Estimated Repair Costs.
8. Disclosure of Prior Repairs.
9. Disclosure of Flooded or Wrecked Vehicles.

#### A. Mandatory Inspection

The Commission considered and rejected a staff recommendation that would have required dealers to inspect all used cars and disclose the results of the inspection.<sup>34</sup> The disclosure would have involved a checklist in which each major mechanical system was to be checked "OK" or "Not OK", together with indication of the reason for any "Not OK" checks. Dealers would have been required to follow a specified inspection protocol when performing inspections. The staff felt that this approach would directly address the problem of dealer misrepresentation of mechanical condition. Under this alternative, buyers would have had a specified number of days to report any problems with "OK" systems.

Industry members expressed concern about the increased post-sale liability that would be incurred by dealers who checked systems "OK", since during the period to report problems dealers would be responsible for repairing any defects in systems marked "OK". In addition, because "OK" checks in effect created warranties under state law, the Commission questioned whether a rule that required dealers to inspect and check "OK" where appropriate would contravene the intent of Congress in section 102(b)(2) of the Magnuson-Moss Warranty Act, which explicitly prohibits the Commission from mandating warranties.

There was also concern that dealers' cost of operation would increase under a mandatory plan; that is, that dealers would have to pay for the inspection of each car offered for sale and would pass

those costs on to the buyer in the form of higher selling prices for cars. Such a result would not have been dictated by market forces but would have been uniformly required for every used car as a result of government intrusion into the marketplace.

The issue of the costs of inspection was addressed extensively in the record. The staff believed that, because a majority of dealers currently inspect cars, inspection costs for most dealers would not increase. Furthermore, for those dealers who did not currently inspect, staff projected a cost range of only \$15-30 per car.<sup>35</sup>

The mandatory inspection rule was finally rejected because the Commission decided that other less intrusive, yet effective, remedial alternatives were available. These remedies were embodied as an "optional inspection" rule proposal and a "warranty terms and known defects" disclosure rule proposal. Ultimately, the Commission chose the latter.

#### B. Optional Inspection

Under the optional inspection alternative, dealers would have been required to post a window sticker with a list of mechanical systems as under mandatory inspection. However, the checklist would have had an additional column, "No Rating" ("We Don't Know").<sup>36</sup> The dealer would have been under no obligation to inspect. If a dealer chose not to inspect, the mechanical systems could simply be checked "No Rating." Additionally, if the dealer inspected and found a system not to be defective, but did not want to assume liability for its condition, the dealer could also check "No Rating." This alternative would have given the dealer the flexibility to determine whether or not to inspect as well as whether or not to assume responsibility for the condition of non-defective systems. If, however, the dealer did inspect or otherwise discovered specified systems to be defective, he or she would have had to disclose such systems as "Not OK" and delineate what the particular problem was.

<sup>32</sup> However, one dealer association conducted a survey of mechanics which produced a cost of inspection ranging from \$25 to 250 per car. See comment of National Independent Automobile Dealers Association, T-742 at Appendix III.

<sup>34</sup> In the version of the optional inspection rule published in the August 7, 1980 Federal Register, the column indicating that a car had not been inspected and that the dealer was making no promises about condition was called "We Don't Know." Technical comments suggested that "We Don't Know" carried pejorative connotations. Therefore, staff recommended that that column be labeled "No Rating." See staff's January 16, 1981 Recommendations Memo.

<sup>33</sup> *Id.* at 97-103. These practices include oral misrepresentations of mechanical condition and "detailing". See n. 46 *supra*; Staff Report at 97-130.

<sup>35</sup> For this reason the Commission rejected the alternative of issuing no rule.

<sup>36</sup> This determination occurred at the October 11, 1979 meeting.



The Commission ultimately rejected an optional inspection approach because of several concerns.<sup>57</sup> First, there was concern that an optional inspection rule would detract from warranty disclosures, especially those relating to "as is" sales, by focusing the buyer's attention on the condition of individual components at the time of sale rather than on the dealer's continuing responsibility—if any—for post-sale repairs. Second, some Commissioners were concerned that a simple "OK"/"Not OK"/"No Rating" evaluation system might not clearly and accurately communicate a car's individual condition and thus could lead to consumer confusion and perhaps even deception. The Commission was also concerned that if dealers of older and cheaper used cars chose not to inspect, checked "No Rating" and sold "as is" with no warranty, the consumer could conceivably be harmed by an optional inspection rule, since the "No Rating" option could undermine a consumer's attempt through litigation to enforce oral dealer promises about condition.

The Commission also considered whether the optional inspection approach would provide consumers with useful information. If dealers of late model cars checked all systems "OK",<sup>58</sup> a consumer shopping for such a car might receive no useful comparative information from the disclosure of mechanical information. The same lack of comparative information would result if dealers of "as is" vehicles checked all systems "No Rating." The Commission also was concerned about the cost of an optional inspection approach. Dealers and dealer organizations claimed that the cost of inspection, even on an optional basis, would be high, and that consumers would ultimately shoulder those costs through higher used car prices.<sup>59</sup>

In light of all of these problems with the optional inspection rule, the Commission decided to fashion in its place a remedy that provides effective relief from the deceptions documented in the record in a manner less intrusive than the optional inspection rule.

#### C. Mandatory Third-Party Inspection Opportunity

The staff considered, but did not recommend, a mandatory pre-sale third-party inspection opportunity for consumers.<sup>60</sup> Under this alternative, dealers would have been required to allow consumers to take the car off the lot for purposes of obtaining a third-party inspection; consumers would have been assured the availability of independent diagnostic analysis. However, record comments suggested such a rule would result in increased costs including increased insurance, personnel time, the decreased availability of cars on the lot, and the possible need to reinspect certain systems. Consumers would thus face the direct costs of inspection, as well as the likely pass-through by the dealer of his or her costs. Because of the potential costs involved in a mandatory, third-party inspection opportunity, the staff did not recommend that the Commission include such a requirement in the final rule.

#### D. Cooling-Off Period

Some consumer organization recommended that a 30-day cooling-off period be added to the optional inspection rule.<sup>61</sup> The cooling-off period would only apply to vehicles that had not been inspected. Its purpose was to give purchasers of vehicles that had not been inspected an opportunity to discover defects on their own and to give dealers an incentive to inspect, in order to avoid the cooling-off period. The staff rejected the cooling-off period alternative because it appeared to have significant costs and uncertain benefits.<sup>62</sup> The costs to dealers included those arising from the danger of theft, the consumer's use of the vehicle as a free rental car or for "joy-riding," uncertainties in financing arrangements (decreasing the rate of inventory turnover or increasing the dealer's capital requirements), increases in insurance rates, repeated detailing expenses, and repeated inspection expenses. If dealers attempted to recover these costs through a user fee to consumers who returned cars, the effectiveness of the cooling-off period would have been reduced since consumers would have little economic incentive to rescind. Thus, the staff believed that other alternatives would be more effective, less costly, and less intrusive than the cooling-off period. The

Commission did not consider a cooling-off rule a viable option, and therefore the issue of a cooling-off period remedy was not discussed by the Commission as an alternative to, nor in conjunction with, the inspection options.

#### E. Disclosure of Prior Use

The Final Staff Report recommended that the Commission include a disclosure of a car's prior use on the Buyers Guide.<sup>63</sup> "Prior use" refers to the manner in which a car was used prior to being offered for sale on the used car lot—e.g., as a taxi, rental car, police car, etc. In the Final Staff Report, the staff proposed that each of these "prior uses" be listed on a window sticker and that the dealer check an appropriate box.

At the October 11, 1979 meeting, the Commission rejected the disclosure of prior use because it believed that staff had failed to demonstrate that consumers were injured when prior use was not disclosed. The Commission stated that, while it appeared prior use was material to consumers, the record did not sufficiently demonstrate that disclosure of prior use provided consumers with an accurate indication of a car's mechanical condition.

#### F. Disclosure of Odometer Accuracy

The Final Staff Report recommended that the Commission include mileage disclosure on the Buyers Guide,<sup>64</sup> even though it duplicated federal law.<sup>65</sup> Staff's arguments focused on the fact that, under the law, disclosure need not be made until the time of sale, which often occurs in a pressure situation with the consumer confronted by a number of forms. Therefore, consumers did not always read the odometer disclosure form. Staff also stated that the repeated disclosure on the Buyers Guide was minimally burdensome since the dealer simply had to copy readings from the odometer disclosure form.

The Commission disagreed. On October 11, 1979, it rejected staff's proposal primarily because it duplicated federal law and therefore appeared unnecessary.

#### G. Disclosure of Estimated Repair Cost

In the Final Staff Report, staff proposed that dealers be required to disclose estimated costs of repair for items checked "Not OK."<sup>66</sup> Staff

<sup>57</sup> The Commission tentatively adopted the optional inspection approach at the May 16, 1980 meeting.

<sup>58</sup> Many late model cars are sold under warranty. Therefore, "OK" checks would create no additional liability for dealers.

<sup>59</sup> The dealer arguments concerning costs were counterbalanced against the evidence that in Wisconsin, after implementation of a mandatory inspection law, the costs of inspections to more than two-thirds of the dealers did not rise. See, e.g., HX 164(A) at V-8.

<sup>60</sup> See Staff Report at 87-92, nn. 80-83; 41 Fed. Reg. 1091-1092 (January 8, 1976).

<sup>61</sup> Other witnesses suggested varying time periods. Staff Report at 183, nn. 245-248.

<sup>62</sup> *Id.* at 185-190.

<sup>63</sup> *Id.* at 337-383.

<sup>64</sup> *Id.* at 384-391.

<sup>65</sup> Motor Vehicle Cost Savings Act, 15 U.S.C. 1988(a)(1). Further, the seller must disclose that the actual mileage is "unknown" if he or she knows the reading is different from the vehicle's true mileage. 15 U.S.C. 1988(a)(2).

<sup>66</sup> Staff Report at 167-68.



enable dealers to reveal to mechanically unsophisticated consumers the true impact of the "Not OK" check. However, at the May 16, 1980 meeting, the Commission rejected the staff's recommendation. The Commission decided that a disclosure of the estimated range of cost would not provide meaningful repair information to consumers, since mechanics could not be specific about repairs for problems not fully diagnosed. The Commission was also concerned about the cost of ascertaining what precise repairs might be necessary.

#### H. Disclosure of Prior Repairs

The initial rulemaking notice on January 6, 1976 included a proposed rule provision which would have required a description of repair work performed by used car dealers.<sup>67</sup> Staff, however, recommended dropping the proposed disclosure of prior repairs because there was no record evidence to support a finding that prior repairs are reliable indicators of current mechanical condition. Moreover, since consumers consider prior repairs to be a negative attribute, disclosure of prior repairs would have reduced dealer incentive to make such repairs. Finally, the record indicates that most consumers could not make effective use of repair information because they lack the technical expertise to distinguish repairs which might indicate more serious problems from repairs which actually improve the value of the vehicle. The Commission agreed with staff's recommendation to eliminate the proposed prior repair disclosure.<sup>68</sup>

#### I. Disclosure of Flooded or Wrecked Vehicles

The Final Staff Report recommended that the Commission include a disclosure that vehicles had been flooded or wrecked and established as an insurance "total loss".<sup>69</sup> In staff's view, the record established that such vehicles are not desired by consumers and are often mechanically inferior to vehicles which have not been wrecked or flooded. However, the Commission decided at the May 16, 1980 meeting that, because insurance companies base their decision as to whether a car is totaled on the market value of the car, and not exclusively upon the amount of

damage, the information provided could result either in unjustifiable depreciation in the value of a car or a failure to disclose severe damage. The provision for disclosure of the fact that a vehicle had been flooded or wrecked was therefore deleted from the rule.

#### V. Other Economic Issues Raised in the Proceeding

During the course of this proceeding some participants raised several issues that they considered important in determining the potential costs of any rule regulating the used car industry. Those issues—dealer market share and dealer exit, and price and marketability of older cars—were raised in the context of more restrictive alternative versions of the Rule. We do not believe that changes in any of these areas would result from imposition on the marketplace of a Rule as unobtrusive as the final version of the Used Car Rule. If consumer demand causes some shifts in the structure of the market, this would be a result of more efficient functioning of the market itself. Such results are not costs of regulation, but benefits from regulation.

#### A. Market Share of Dealers Will Decline; Some Dealers Will Exit From the Market

Some commentators pointed to data from the Wisconsin Study<sup>70</sup> that demonstrates a decline in the share of the used car market held by dealers after the passage of Wisconsin's used car inspection law. These commentators suggested that any similar inspection-focused rule could have the same consequences.

We believe that the Wisconsin Study indicates that the decline in dealer market shares in Wisconsin was caused in part by the mandatory nature of the inspection law in that state, along with the requirement that dealers repair safety defects. Some dealers were unwilling to repair safety items and therefore may have chosen to leave the market. Others were unwilling to assume the responsibility for post-purchase repairs mandated if dealers checked items "OK".<sup>71</sup>

The Rule that the Commission has adopted does not require safety repairs and in no way mandates post-purchase repairs. Dealer costs will not be increased since they will not be forced to make additional repairs. Therefore, there is no reason to believe that the decline in dealer market shares which occurred in the context of the mandatory inspection and safety repair

law in Wisconsin is indicative of the likely impact of the final Used Car Rule.

On the contrary, to the extent that the Rule succeeds in informing buyers about the quality of used cars, many high quality used cars which were previously not sold through dealers may be marketed by them.<sup>72</sup> The Wisconsin Study showed that people who buy from private parties rate the quality of information received from the seller higher than the quality of information received by people who buy from dealers.<sup>73</sup> The Commission believes that the Used Car Rule will improve the quality of information received from dealers and will thereby attract some buyers away from the private market and into the dealer market. Any loss of market share or dealer exit from the market will be the result of a more competitively efficient market. Those who cannot sell without misrepresentations will leave the market because of firm inefficiencies, rather than overburdensome regulations.

#### B. Price of Cars Will Increase

A related argument put forth by some is that the purchase price of cars will increase as the result of increased inspection, pre-sale repair and warranty repair costs. However, in analyzing this argument, it is important to keep in mind that the important cost is ownership cost, not purchase price. The real cost of buying a car includes the purchase price and any costs incurred by the consumer to repair defects in the vehicle. The Commission has no reason to believe that the ownership cost of used cars will increase as a result of the Rule.

The Rule is not likely to result in a large increase in inspections since it was not designed to either require or directly encourage inspections by dealers. Some additional pre-sale and warranty repairs by dealers may result, and these could increase the prices of some used cars. However, these dealer repairs will produce a comparable (or greater) decrease in repair costs borne by purchasers.<sup>74</sup> Therefore, the Commission does not believe that total post-Rule ownership costs will exceed total pre-Rule ownership costs.

Another perspective on possible price changes suggests that, in the absence of

<sup>67</sup> 41 FR 1089 (1976).

<sup>68</sup> This occurred at the October 11, 1979 meeting.

<sup>69</sup> Staff Report at 160-164. Cars that are subjected to flood damage in one state are often shipped out of state for sale and sold without informing the consumer of damage incurred. In the case of "wrecked" vehicles, insurance companies consider the car a total loss when estimated repairs exceed the vehicle's market value.

<sup>70</sup> HX 164(A) at 55.

<sup>71</sup> *Id.* at Table V-14.

<sup>72</sup> See, Staff Report at 204-208.

<sup>73</sup> This applies to all categories of information except warranty content. Wisconsin Study, HX 164(A), at Table IV-2. See also Staff Report at 146-148.

<sup>74</sup> In Wisconsin, where safety repairs were mandated, ownership costs actually declined after passage of the inspection and safety repair law. However, we can not state with any assurance that this decline was caused by the increased repairs mandated by the law. HX 164(A) at 59.



reliable information about mechanical condition, consumers pay less than they might otherwise for vehicles that are in excellent mechanical condition. On the other hand, they pay more than they would for vehicles in poor condition.<sup>78</sup> One effect of information disclosure is to make the price of differentials between various vehicles more accurately reflect their differences in condition and serviceability. Under this analysis, the Rule would produce price increases in cars that ought to bear a higher price, and price decreases in cars that currently sell for more than they are worth.

*C. Dealers Will Be Unable To Sell Older or High-Mileage Cars if They Have To Disclose Known Defects*

Some have argued that if dealers are required to disclose known defects, they will be unable to continue to sell older, high mileage cars. We do not believe this will result from the Rule. Such vehicles will still be sold by dealers, but perhaps at lower prices than they are currently able to obtain in the absence of disclosure. We view such a reduction in price as a desirable market-determined response to buyer preference and accurate information regarding the car.

**VI. Consistency With Applicable Law**

The law applicable to this Rule derives from Section 109(b) of the Magnuson-Moss Warranty Act, which provides:

(b) The Commission shall initiate within one year after the date of enactment of this Act a rulemaking proceeding dealing with warranties and warranty practices in connection with the sale of used motor vehicles; and, to the extent necessary to supplement the protections offered the consumer by this title, shall prescribe rules dealing with such warranties and practices. In prescribing rules under this subsection, the

Commission may exercise any authority it may have under this title, or other law, and in addition it may require disclosure that a used motor vehicle is sold without any warranty and specify the form and content of such disclosure.

Section 109(b) specifically states that the Commission, in issuing such rule, "may exercise any authority it may have under this title, or other law". Moreover, Section 111(a)(1) of the Act states that:

Nothing contained in this title shall be construed to repeal, invalidate or supersede the Federal Trade Commission Act \* \* \*

Thus, the Commission's authority to require disclosure of warranty coverage and "as is" sales arises from Section 109(b). Each of the general information disclosures—spoken promises warning, notice of pre-purchase inspection opportunity, and list of major systems—complement the warranty and "as is" disclosures and thus are appropriate additional remedies for the abuses concerning used car "warranties and practices" documented in the record. The spoken promises warning emphasizes the importance of obtaining warranty promises in writing. The notice of pre-purchase inspection opportunity alerts consumers to a potential mechanism for assessing the value of the warranty coverage offered and the total ownership costs. Similarly, the list of major systems provides consumers with a framework within which to evaluate the warranty coverage offered.

The record of this proceeding demonstrates that many dealers engage in deceptive practices, including affirmative misrepresentations and failures to disclose to consumers material facts about the mechanical condition of cars at the time of sale. The requirement that dealers disclose known defects arises from Section 18(a)(1)(B) of the FTC Act. That section provides that the Commission may prescribe:

(B) rules which define with specificity acts or practices which are unfair or deceptive acts or practices in or affecting commerce (within the meaning of such section 5(a)(1)), \* \* \* [which] may include requirements prescribed for the purpose of preventing such acts or practices.

The known defect disclosure requirement is fully consistent with the Commission's authority to promulgate rules to prohibit and prevent such deceptive acts and practices.

The known defect disclosure requirement is also a justified complement to the Rule's primary focus on warranty disclosures, as contemplated by Section 109(b) of the Warranty Act. Consumers can best assess the value of warranties offered (and thus total ownership costs) in light of information about the condition of the car at the time of sale. The known defect disclosure will provide some indication of the condition of the car at the time of sale and thus serves as a means for consumers to evaluate warranty coverage. Therefore, because the disclosure is integrally related to warranties and warranty practices, it is consistent with Section 109(b) of the Warranty Act as well as with Sections 5 and 18 of the FTC Act.

**VII. Conclusion**

This analysis demonstrates that, in formulating a rule to remedy the abuses in the used car industry, the Commission has weighed several alternatives, all of which were more intrusive than the Rule we have adopted. We believe that the benefits of this Rule outweigh its costs and that the Rule will be effective in remedying the deceptive practices established by the record.

By direction of the Commission,  
Carol M. Thomas,  
Secretary.

[FR Doc. 81-23326 Filed 8-13-81; 8:45 am]  
BILLING CODE 6750-01-M

<sup>78</sup> Staff Report at 204-206.



# **federal register**

---

Friday  
August 14, 1981

---

## **Part IV**

## **Department of Labor**

**Wage and Hour Division, Employment  
Standards Administration**

---

**Service Contract Act; Labor Standards  
for Federal Service Contracts**



## DEPARTMENT OF LABOR

## Wage and Hour Division, Employment Standards Administration

## 29 CFR Part 4

## Service Contract Act; Labor Standards for Federal Service Contracts

**AGENCY:** Wage and Hour Division, Employment Standards Administration, Labor.

**ACTION:** Proposed rule.

**SUMMARY:** This document is a proposal resulting from the Department of Labor's reexamination of regulations on Labor Standards for Federal Service Contracts, Part 4 issued under the Service Contract Act. Proposed major revisions include a two-step determination procedure where the geographic place of contract performance is unknown; elimination of the provisions that made bid specifications principally for services subject to the Act when the principal purpose of the entire contract is not for services; a revision to provide that contracts are not subject to the Act unless the services are performed principally by service employees; guidelines indicating when contracts for major overhaul or modification of equipment are subject to the Service Contract Act or Walsh-Healey act; an exemption for R & D contracts; an exemption for certain contracts for the maintenance and repair of automated data processing equipment including office information systems, related scientific and medical apparatus, and office/business machines; elimination of the provisions that contracts primarily for the sale of timber are subject to the Act; and a limitation of the application of section 4(c) of the Act to situations where the successor contractor performs the contract in the same locality as the predecessor contractor.

**DATES:** Comments (three copies) must be received on or before October 13, 1981.

**ADDRESS:** Comments should be sent to William M. Otter, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S-3502, 200 Constitution Avenue NW., Washington, D.C. 20210.

**FOR FURTHER INFORMATION CONTACT:** William M. Otter, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S-3502, 200 Constitution Avenue NW., Washington, D.C. 20210 (telephone: 202-523-8305).

**SUPPLEMENTARY INFORMATION:** On December 28, 1979, a proposal was published in the *Federal Register* (44 FR

77036) to make certain revisions to 29 CFR Part 4, Service Contract Act; Labor Standards for Federal Service Contracts. The purpose of these changes was to revise, update, and clarify this Regulation.

Interested persons were afforded the opportunity to submit comments to the Wage and Hour Division within 60 days after publication of the notice in the *Federal Register*. Subsequently, notices were published in the *Federal Register* extending the time for public comment until October 24, 1980.

On January 16 and 19, 1981, revised Part 4 was published in the *Federal Register* (46 FR 4320; 46 FR 4886) as a final rule. However, pursuant to the President's Memorandum of January 29, 1981, the Department published a notice in the *Federal Register* on February 12, 1981 (46 FR 11971), delaying implementation of this regulation until April 17, 1981. The Department further delayed its implementation until August 15, 1981, in order to permit reconsideration pursuant to Executive Order 12291. See 46 FR 18973 (March 27, 1981); 46 FR 23739 (April 28, 1981); 46 FR 33515 (June 30, 1981); 46 FR 36140 (July 14, 1981). During this period, the Department conducted a thorough review of the regulation and is proposing appropriate changes as contained in this document. By separate document, the effective date of the regulation published in January 1981 is being further delayed until action is taken on this proposal.

It has been concluded, in accordance with Executive Order 12291, that the proposed changes are the most cost effective, efficient, and least burdensome alternatives consistent with the purpose of the statute and, accordingly, are of the greatest net benefit to society.

The regulations proposed today would not appear to require a regulatory impact analysis under the Executive Order since these changes will result in substantial cost savings annually for both contractors and the government while still assuring protection of local wage rates and effective enforcement of the Act. Because of the importance to the government and the public of the issues involved, the Department has, nevertheless, concluded that the regulation should be deemed a "major" rule for purposes of Executive Order 12291. The Department's initial regulatory impact analysis and the initial regulatory flexibility analysis assessing the impact of the proposed changes on small entities, as required by the Regulatory Flexibility Act, are summarized after the discussion below of the proposed changes.

Revisions are proposed to sections 4.3, 4.4, and 4.53, to provide for a "two-step" procedure for the issuance of wage determinations in situations where the geographic place of contract performance is unknown at the time bid solicitations are issued. After reviewing the decision in *Southern Packaging and Storage Co. v. United States*, 618 F. 2d 1088 (4th Cir. 1980), it was determined that some mechanism should be devised to issue wage determinations, to the extent feasible, for the various localities where the contract may be performed. Accordingly, under this proposal it is proposed that, except where it is impracticable, the following procedure will be used: First, the contracting agency would issue an initial solicitation with no wage determination. Potential bidders and their locations will then be identified, and appropriate wage determinations for all locations will be issued by the Department to be attached to the solicitation. The successful bidder would be required to observe the applicable wage determination for its location identified in the first step, which would be incorporated in the contract. This would ensure that a contract would continue to be covered by a wage determination if a contractor later changes the place of contract performance.

Since this proposal would be most effective if a corresponding change is made in procurement regulations to comport with the new procedures and to exclude participation by any new bidders at the second step, specific comments and suggestions are requested from affected contracting agencies as to the practicality of the proposal.

It is our intent to issue wage determinations that are more responsive to contract requirements by establishing wage rates, to the extent possible, for all classifications requested by the agencies. This should reduce the frequency of cases requiring conformance actions because a classification not listed on a wage determination will perform on a contract. In this regard, it is proposed to add a new paragraph (c) to § 4.51 which explains the procedures used for deriving wage rates through slotting, a generally accepted technique in wage and salary administration which is used extensively under the Federal pay system. This approach is considered to provide a reasonable extrapolation of the rate that would otherwise be found to prevail and is deemed acceptable as the best information available for establishing a prevailing rate where a classification is not included in survey



data but is required in the performance of a contract.

Substantive revisions have been proposed in § 4.6(b)(2) in order to simplify the method of conforming wage rates and/or fringe benefits for classifications which are not listed on an applicable wage determination. In addition, the contractor may, without the approval of the Department, conform wage rates and fringe benefits which were the subject of a previous conformance action by indexing the previous rates by an amount equal to the average percentage increase between the rates specified for the classifications in the current wage determination and those contained in the previously applicable wage determination.

A revision to §§ 4.6(m) and 4.7 would provide a contractor with notice in his contract of the rulings and interpretations of the Act which are contained in this part, and which are followed by the Department in the administration and enforcement of the Act, but would not provide that these rulings are incorporated in the contract.

Section 4.11 is proposed to be revised to make it clear that decisions under the National Labor Relations Act, as amended, regarding "good faith" bargaining may be used in determining whether a collective bargaining agreement was reached as a result of "arm's length negotiations," within the meaning of section 4(c) of the Act.

It is proposed to modify §§ 4.110, 4.132, and other appropriate sections to eliminate the provisions which had stated that a bid specification principally for services was covered in a contract which was not principally for services. After consideration of this question, the Department determined that the Act should not apply to service specifications in contracts whose principal purpose is not the furnishing of services.

After a careful review, the Department considers that the Act, which applies to any contract "the principal purpose of which is to furnish services . . . through the use of service employees," applies only to contracts principally for services which are performed principally by service employees. Sections 4.110, 4.111, and 4.113 would therefore be revised accordingly. Section 4.113 would explain that in determining whether a contract is performed principally by service employees, the determination would ordinarily be made on the basis of whether the service employees comprise a majority of total projected employment or staff years on the contract. In close cases or where

employment cannot be predicted, the Department of Labor would consider other factors such as the nature of the contract work and how integral the work performed by service employees is to the contract.

It is envisioned that research and development (R & D) contracts would not generally be subject to the Act under this proposed revision, since the contract services are normally performed principally by professional employees. In any event, it appears from our examination of the legislative history that Congress did not intend that R & D contracts would be subject to the Act (see H.R. Rep. No. 1495, 88th Cong., 2d Sess. 5 (1964)). For this reason, section 4.123(e)(4) would exempt contracts for R & D services. In light of the Congressional intent, this exemption would be consistent with the Act's remedial purpose. Furthermore, although the Department has often issued wage determinations for R & D contracts, most such contracts do not contain SCA wage determinations. We have been advised by the contracting agencies that without such an exemption, they would be unable to procure R & D contracts in many instances, particularly from universities. Because of the great government need for such contracts, it appears that such an exemption would be necessary and proper in the public interest and to avoid the serious impairment of government business.

However, the exemption does not apply to contracts for operations and maintenance of government testing or similar research facilities or support services for such facilities, which may be funded under the broad category of R & D funding, but which have traditionally been subject to SCA.

Section 4.114 would be revised to make it clear that a prime contractor is liable for underpayments by its subcontractor, but that enforcement sanctions will be applied to the prime contractor only where appropriate under the circumstances of the case.

Section 4.117 (formerly § 4.122 of the current regulations), which concerns the application of the exemption in section 7(2) of the Act for work subject to the Walsh-Healey Act, had been reserved pending completion of an indepth review of the long-standing controversy as to whether the Service Contract Act or the Walsh-Healey Act applies to major overhaul and modification contracts. Guidelines are now proposed to determine when overhaul or modification of equipment is so extensive as to constitute manufacturing subject to the Walsh-Healey Act, rather than the Service Contract Act. Work of a routine maintenance, tune-up, repair,

inspection, etc., nature would continue to be subject to the Service Contract Act.

A new § 4.123(e) is proposed to provide the following exemption from the Act:

(1) Contract requirements for the maintenance or repair of automated data processing equipment, including office information systems, procured pursuant to public Law 89-306 (40 U.S.C. 759);

(2) Contract requirements for the maintenance and repair of scientific and medical apparatus or equipment which has automated data processing or other high technology as an essential element;

(3) Contract requirements for the maintenance and repair of office/business machines where such maintenance and repair is performed by the manufacturer or supplier of the equipment.

This exemption is proposed because of our information that the affected employees are relatively highly paid in accordance with varied, complex, and intricately structured merit pay systems; that, in the absence of this exemption, there is likely to be serious adverse impact on the operations of the Government, such as the potential curtailment of crucial programs and services, many of which are critical to national defense and security, as a result of certain segments of the industry ceasing to do business with the Government; that the preponderance of total industry contracts with the Federal Government are for commercial products and service of those products at standard commercial prices; that the maintenance and repair of equipment furnished to the Government constitutes a minor proportion of total business, is of an "on-call nature" and, therefore, is sporadic and intermittent; and that the employees in question are not principally assigned to Federal Government contract work but perform such work as an integral part of their day-to-day duties of servicing equipment in commercial establishments.

It has been determined, pursuant to the Secretary's authority in section 4(b) of the Act, that it is necessary and proper in the public interest and to avoid the serious impairment of Government business to provide such exemption from all the provisions of the Service Contract Act. This exemption is also found to be not inconsistent with the remedial purpose of the Act to protect prevailing labor standards in that, because of the nature of the procurements, it will not result in the award of contracts to contractors who



cut workers' wages as the mechanism to achieve competitive advantage through lower bid prices.

It is proposed to revise §§ 4.130(a) and 4.131(f) and other appropriate sections to eliminate the provisions regarding coverage of contracts for the sale of timber from Federal land. After a further review of this matter, the Department concluded that the services provided under such contracts are generally only incidental to the principal purpose of the contract which is the sale of timber. After reviewing the Organic Act of 1897, the National Forest Management Act of 1976, and their relationship to the Service Contract Act, there is no indication that timber sales contracts are predominately service oriented. Of course, in an unusual case, a contract may in fact be principally for some other purpose such as clearing of land or removal of dead timber, and be subject to the Act.

It is proposed to revise §§ 4.116(b) and 4.131(f) to clarify that contracts involving the disposal of property are subject to the Act only where the facts show that the principal purpose of the contract is the furnishing of demolition, dismantling, and/or removal services, as distinguished from contracts where removal is incidental to sale of salvage material.

Section 4.133(b) would be revised to include visitor information services within the exemption for concessionaires serving visitors to Federal facilities, such as those of the National Park Service. Another proposed revision would permit inclusion of incidental requirements, such as maintenance of Government property, in exempt concession contracts, but would provide that substantial requirements other than those activities stated would not be within the exemption.

A revision is proposed to § 4.163(g) to limit the application of the principles regarding contract reconfiguration to cases where the new or consolidated contract is primarily for services furnished under a predecessor contract. Where there is more than one predecessor contract, the collective bargaining agreement of the one which was for the predominant part of the services of the new or consolidated contract would control. This revision is considered to be consistent with the language of section 4(c) of the Act, which applies to successor contracts "under which substantially the same services are furnished \* \* \*." This interpretation will address such situations as where there is more than one predecessor contract and therefore more than one predecessor collective

bargaining agreement which would otherwise be applicable to a contract.

Revisions are proposed to § 4.163(i) and numerous other affected sections to limit the application of the successorship provisions of section 4(c) of the Act to successor contracts which are performed in the same locality as the predecessor contract. This issue has been considered on several occasions since enactment of section 4(c) in 1972. It appears that the Department's prior interpretation that section 4(c) has no such limitation may have added problems to the procurement process. Specifically, the regulations have heretofore required a successor contractor performing contract services at its own facility in a different locality from that in which its predecessor contractor performed to pay imported collectively bargained rates. This had the potential of disrupting locally prevailing wages, and impairing the successor contractor's own pay structure and labor relations. Increased costs to the Government were likely. After reconsideration of the regulations in accordance with Executive Order 12291, the Department has determined that limiting the successorship provisions to successor contracts performed "in the same locality" as the predecessor contract will satisfy the statutory requirements of section 4(c) of the Act. Under this interpretation, section 4(c) would continue to apply to contracts performed at the contractor's plant but in the same general locality as the predecessor contract.

Section 4.168(b) would be revised to provide that normally a contractor need not compensate employees for maintenance of "wash and wear" uniforms which can be routinely washed with personal garments and meet certain other conditions.

#### Summary of Preliminary Regulatory Impact and Regulatory Flexibility Analysis

The Department has prepared its preliminary regulatory impact analysis to identify and quantify the cost impact of the proposed changes and various alternatives that were explored and to inform the public of the economic considerations behind these proposed revisions in accordance with Executive Order 12291.

The new proposal must also consider the Regulatory Flexibility Act of 1980. This Act requires agencies to prepare regulatory flexibility analyses and to develop flexible alternatives whenever possible in drafting regulations that will have "a significant economic impact on a substantial number of small entities." The analysis, which is summarized

below, also meets the requirements set forth for assessing the economic impact of the proposed changes in the Service Contract Act regulations on small entities as required under the Regulatory Flexibility Act.

#### A. SCA Coverage and Exemption Issues

There are several important proposed changes affecting coverage and exemptions under the Act including (1) the proposed exemption of research and development contracts; (2) the proposal to cover contracts under SCA only when the work is performed principally through service workers; (3) the proposed exemption of maintenance and repair services on ADP and high technology scientific and medical apparatus or equipment and on office/business machines when performed by the manufacturer or supplier; (4) the proposal not to generally apply the Act to timber sales contracts; and (5) the proposed coverage of bid specifications for services only in instances where the contract as a whole is principally for services. Together, the proposed coverage changes should result in substantially lower costs on federal contracts amounting to at least \$240 million annually.

The major economic concern of industries and procuring agencies faced with potential SCA coverage is that the wage determinations required by the Service Contract Act would add to the costs of federal contracts. Therefore, we attempted to assess the impact of SCA coverage (and hence the potential cost savings from the absence of SCA coverage) using a wage analysis that compared SCA wage determinations to a range of wages found for similar service occupations in each area. Under this methodology, the portion of the wage distribution that lies below each SCA wage rate provides a measure of the possible wage cost savings in the absence of SCA coverage. This approach thus recognizes that even if wages are set at the mean or median wage, government contracting costs could still be increased to the extent that contractors could not pay wages below the prevailing rate.

For our sample of 23 technical and clerical occupations and 30 areas from area wage surveys conducted by the Bureau of Labor Statistics (BLS), every observed wage in the BLS Survey which fell below the level of the relevant SCA wage determination was identified. All wages below the SCA rate were then subtracted from the SCA determination for each occupational class in each city. Summing these differences and dividing by the number of workers below the



SCA rate and the average wage in the relevant sample produced an estimate of the percentage increase in wages resulting from SCA for each occupation in each city. These individual estimates were next averaged across areas and occupations to provide a single representative estimate of 4.17 percent as the wage impact of SCA coverage for these clerical and technical occupations. The results using this methodology suggest that there may be some modest upward pressure on wages from SCA requirements, but its magnitude is not as large as is sometimes asserted.

This percentage increase was used to represent the possible wage cost effects from SCA provisions for (1) the proposed exemption of R&D contracts; (2) the proposed change in the Department's coverage interpretation of specifications for services which are part of contracts for supply or other purposes (except those relating to timber sales contracts and the repair and maintenance of ADP and high technology scientific and medical equipment); and (3) coverage revisions concerning contracts performed principally through the use of service employees. Wage increases from coverage of timber sales contracts are estimated using this methodology but with different data applicable to the special occupations used in such contracts and rural areas. Finally, we have specific data on the ADP and high technology industry with which to estimate the expected wage cost impact.

With these wage impact estimates, the cost impact of alternative options were derived by multiplying the estimated wage increases for each contract type by the share of total contract costs paid to services employees. The estimated labor cost savings from the proposed revisions over the alternative regulations published in January 1981 for each coverage and exemption issue were then calculated directly from these cost estimates. Specific applications of this methodology to the coverage and exemption areas under review and resulting cost estimates are presented in the preliminary regulatory impact analysis. Since many of the proposed changes partially overlap each other in terms of their impact on covered contracts, the expected cost savings must be examined in tandem. Together, the proposed changes in coverage, and exemptions if adopted, would result in substantial cost savings for both government and contractors amounting to about \$240 million per year.

#### B. Locality of Wage Determinations

For a small percentage of wage determinations, the place of

performance of the contract is unknown at the time of bid solicitation because the contract will be performed at the location of the successful bidder's facility. Accordingly, the proper locality to use for these wage determinations is problematic.

The Department of Labor in recent years has generally issued wide-area, composite wage determinations encompassing all of the localities in which potential bidders would be located. The composite area could be a cluster of counties, a state, a region, or even the entire country. "Averaging" across localities would tend to raise contracting costs.

After further consideration of a recent court decision in *Southern Packaging and Storage Co. vs. United States* generally prohibiting nationwide rates except in extraordinary cases and the problems of issuing wage determinations which do not reflect locally prevailing rates, the Department now proposes to implement a two-step procedure that would generally result in wage determinations for the various localities of the potential bidders.

In addition, the proposed revisions would limit the application of the successorship provisions of section 4(c) of the Act to successor contracts which are performed in the same locality as the predecessor contract. The current interpretation as expressed in the January regulation imposes no such limitation, thereby requiring a successor contractor performing services at its own facility in a different locality from its predecessor contractor to pay collectively bargained rates from a different locality. This had the potential of disrupting locally prevailing wages, resulting in increased government costs.

While it was not possible with available data to quantify the cost impact, the Department believes that these proposed changes will lower government contracting costs significantly and better assure that SCA determinations reflect prevailing wages found in local labor markets, as contemplated by the statute.

#### C. Cost Impact on Small Entities

Much of these costs savings would be passed on to small contractors who make up a large part of the federal contracting universe. For example, Employer Information Reports filed in 1979 by all federal contractors with at least 50 employees and a \$50,000 or more contract show that even at these thresholds, about 70 percent of the remaining federal contractors were firms with fewer than 250 employees. This included 3,221 small employers with 50-99 employees and 5,889 slightly

larger firms with 100-249 employees. In the logging industry, the proportion of small contractors is even larger. About 80 percent of the logging operations were in establishments having fewer than 100 employees. Thus, even if costs are proportionate for small and large contractors, there would be a large reduction expected in contracting costs for smaller contractors.

Also, the proposed revision in the principal purpose test to apply SCA to contracts performed principally through service employees is expected to differentially impact small entities. While exclusion from coverage is based on the number and percentage of service employees, this correlates to some extent with the size of the contract. Thus, smaller size contracts are more likely candidates for this exclusion. Federal Procurement Data System data for Fiscal Year 1979 indicates that nearly 37 percent of contractors had contracts under \$50,000 while 48 percent held contracts under \$100,000. While the proportion of these small contracts which are awarded to small firms is unknown, smaller firms are probably heavily represented in the smaller contracts. Thus, smaller entities can be expected to benefit relatively more from the proposed majority test for determining coverage. For all of these reasons, while we cannot develop numerical cost estimates, the Department believes that substantial cost savings would accrue to small contractors, if the proposed changes were adopted.

#### D. Summary

The proposed revisions discussed above will result in substantial cost savings of at least \$240 million annually for both contractors and the government while still assuring protection of local wage rates and practices. The changes will have a substantial beneficial impact on small contractors.

Copies of the complete analysis may be obtained from the Deputy Administrator, Wage and Hour Division, U.S. Department of Labor, 200 Constitution Avenue N.W., Washington, D.C. 20210. The Department requests comments and additional information on all economic assumptions used in the analysis as well as any alternative suggestions designed to achieve the objectives of Executive Order 12291 at lower costs.

Accordingly, it is proposed to revise 29 CFR Part 4 as set forth below.



Signed at Washington, D.C., on this 10th day of August, 1981.

Raymond J. Donovan,

Secretary of Labor.

Robert B. Collyer,

Deputy Under Secretary for Employment Standards.

## PART 4—LABOR STANDARDS FOR FEDERAL SERVICE CONTRACTS

### Subpart A—Service Contract Labor Standards Provisions and Procedures

#### Sec.

- 4.1 Purpose and scope.
- 4.1a Definitions and use of terms.
- 4.1b Payment of minimum compensation based on collectively bargained wage rates and fringe benefits applicable to employment under predecessor contract.
- 4.2 Payment of minimum wage specified in section 8(a)(1) of the Fair Labor Standards Act of 1938 under all service contracts.
- 4.3 Wage determinations.
- 4.4 Notice of intention to make a service contract.
- 4.5 Contract specification of determined minimum wages and fringe benefits.
- 4.6 Labor standards clauses for Federal service contracts exceeding \$2,500.
- 4.7 Labor standards clause for Federal service contracts not exceeding \$2,500.
- 4.8 Notice of awards.
- 4.9 [Reserved]
- 4.10 Substantial variance proceedings under section 4(c) of the Act.
- 4.11 Arm's-length proceedings.
- 4.12 Substantial interest proceedings.

### Subpart B—Wage Determination Procedures

- 4.50 Types of wage and fringe benefit determinations.
- 4.51 Prevailing in the locality determinations.
- 4.52 Collective bargaining agreement (successorship) determinations.
- 4.53 Locality basis of wage and fringe benefit determinations.
- 4.54 Issuance and revision of wage determinations.
- 4.55 Review and reconsideration of wage determinations.

### Subpart C—Application of the McNamara-O'Hara Service Contract Act

#### Introductory

- 4.101 Official rulings and interpretations in this subpart.
- 4.102 Administration of the Act.
- 4.103 The Act.
- 4.104 What the Act provides, generally.
- 4.105 The Act as amended.
- 4.106 [Reserved]

#### Agencies Whose Contracts May Be Covered

- 4.107 Federal contracts.
- 4.108 District of Columbia contracts.
- 4.109 [Reserved]

#### Covered Contracts Generally

- 4.110 What contracts are covered.
- 4.111 Contracts "to furnish services".
- 4.112 Contracts to furnish services "in the United States".

#### Sec.

- 4.113 Contracts to furnish services "through the use of service employees".
- 4.114 Subcontracts.

#### Specific Exclusions

- 4.115 Exemptions and exceptions generally.
- 4.116 Contracts for construction activity.
- 4.117 Work subject to requirements of Walsh-Healey Act.
- 4.118 Contracts for carriage subject to published tariff rates.
- 4.119 Contracts for services of communications companies.
- 4.120 Contracts for public utility services.
- 4.121 Contracts for individual services.
- 4.122 Contracts for operation of postal contract stations.
- 4.123 Administrative limitations, variations, tolerances, and exemptions.

#### Particular Application of Contract Coverage Principles

- 4.130 Types of covered service contracts illustrated.
- 4.131 Furnishing services involving more than use of labor.
- 4.132 Services and other items to be furnished under a single contract.
- 4.133 Beneficiary of contract services.
- 4.134 Contracts outside the Act's coverage.
- 4.135 [Reserved]
- 4.136 [Reserved]
- 4.137 [Reserved]
- 4.138 [Reserved]
- 4.139 [Reserved]

#### Determining Amount of Contract

- 4.140 Significance of contract amount.
- 4.141 General criteria for measuring amount.
- 4.142 Contracts in an indefinite amount.

#### Changes in Contract Coverage

- 4.143 Effects of changes or extensions of contracts, generally.
- 4.144 Contract modifications affecting amount.
- 4.145 Extended term contracts.

#### Period of Coverage

- 4.146 Contract obligations after award, generally.
- 4.147 [Reserved]
- 4.148 [Reserved]
- 4.149 [Reserved]

#### Employees Covered by the Act

- 4.150 Employee coverage generally.
- 4.151 Employees covered by provisions of section 2(a).
- 4.152 Employees subject to prevailing compensation provisions of sections 2(a) (1) and (2) and 4(c).
- 4.153 Inapplicability of prevailing compensation provisions to some employees.
- 4.154 Employees covered by sections 2(a) (3) and (4).
- 4.155 Employee coverage does not depend on form of employment contract.
- 4.156 Employees in bona fide executive, administrative, or professional capacity.

#### Subpart D—Compensation Standards

- 4.159 General minimum wage.
- 4.160 Effect of section 8(e) of the Fair Labor Standards Act.
- 4.161 Minimum monetary wages under contracts exceeding \$2,500.

#### Sec.

- 4.162 Fringe benefits under contracts exceeding \$2,500.
- 4.163 Section 4(c) of the Act.
- 4.164 [Reserved]

#### Compliance With Compensation Standards

- 4.165 Wage payments and fringe benefits—in general.
- 4.166 Wage payments—unit of payment.
- 4.167 Wage payments—medium of payment.
- 4.168 Wage payments—deductions from wages paid.
- 4.169 Wage payments—work subject to different rates.
- 4.170 Furnishing fringe benefits or equivalents.
- 4.171 "Bona fide" fringe benefits.
- 4.172 Meeting requirements in particular fringe benefits—in general.
- 4.173 Meeting requirements for vacation fringe benefits.
- 4.174 Meeting requirements for holiday fringe benefits.
- 4.175 Meeting requirements for health, welfare, and/or pension benefits.
- 4.176 Payment of fringe benefits to temporary and part-time employees.
- 4.177 Discharging fringe benefit obligations by equivalent means.
- 4.178 Computation of hours worked.
- 4.179 Identification of contract work.

#### Overtime Pay of Covered Employees

- 4.180 Overtime pay—in general.
- 4.181 Overtime pay provisions of other Acts.
- 4.182 Overtime pay of service employees entitled to fringe benefits.

#### Notice to Employees

- 4.183 Employees must be notified of compensation required.
- 4.184 Posting of notice.

#### Records

- 4.185 Recordkeeping requirements.
- 4.186 [Reserved]

#### Subpart E—Enforcement

- 4.187 Recovery of underpayments.
- 4.188 Ineligibility for further contracts when violations occur.
- 4.189 Administrative proceedings relating to enforcement of labor standards.
- 4.190 Contract cancellation.
- 4.191 Complaints and compliance assistance.

Authority: 41 U.S.C. 351, et seq., 79 Stat. 1034, as amended in 86 Stat. 789, 90 Stat. 2358; 41 U.S.C. 38 and 39; and 5 U.S.C. 301.

### Subpart A—Service Contract Labor Standards Provisions and Procedures

#### § 4.1 Purpose and scope.

This part contains the Department of Labor's rules relating to the administration of the McNamara-O'Hara Service Contract Act of 1965, as amended, referred to hereinafter as the Act. Rules of practice for administrative proceedings under the Act and for the review of wage determinations are contained in Part 6 of this chapter. See



Part 1925 of this title for the safety and health standards applicable under the Service Contract Act.

#### § 4.1a Definitions and use of terms.

As used in this part, unless otherwise indicated by the context—

(a) "Act," "Service Contract Act," McNamara-O'Hara Act, or "Service Contract Act of 1965" shall mean the Service Contract Act of 1965 as amended by Public Law 92-473, 88 Stat. 789, effective October 9, 1972, Pub. L. 93-57, 87 Stat. 140, effective July 6, 1973, and Pub. L. 94-489, 90 Stat. 2358, effective October 13, 1976 and any subsequent amendments thereto.

(b) "Secretary" includes the Secretary of Labor, the Deputy Under Secretary for Employment Standards, and their authorized representatives.

(c) "Administrator" means the Administrator of the Wage and Hour Division, or the authorized representative as set forth in this part. In the absence of the Wage-Hour Administrator, the Deputy Administrator of the Wage and Hour Division is designated to act for the Administrator under this part. Except as otherwise provided in this part, the Assistant Administrator for Government Contract Wage Standards is the authorized representative of the Administrator for the performance of functions relating to the making of wage determinations and the enforcement of the Service Contract Act of 1965, as amended, and this part.

(d) "Office of Government Contract Wage Standards" or "OGCWS" means the organizational unit in the Wage and Hour Division, Employment Standards Administration, to which is assigned the performance of functions of the Secretary under the Service Contract Act of 1965 as amended.

(e) "Contract" includes any contract subject wholly or in part to the provisions of the Service Contract Act of 1965 as amended, and any subcontract of any tier thereunder. (See §§ 4.107-4.134.)

(f) "Contractor" includes a subcontractor whose subcontract is subject to provisions of the Act. Also, the term "employer" means, and is used interchangeably with, the terms "contractor" and "subcontractor" in various sections in this part. The U.S. Government, its agencies, and instrumentalities are not contractors, subcontractors, employers or joint employers for purposes of compliance with the provisions of the Act.

(g) "Affiliate" or "affiliated person" includes a spouse, child, parent, or other close relative of the contractor or subcontractor; a partner or officer of the

contractor or subcontractor; a corporation closely connected with a contractor or subcontractor as a parent, subsidiary, or otherwise; and an officer or agent of such corporation. An affiliation is also deemed to exist where, directly or indirectly, one business concern or individual controls or has the power to control the other or where a third party controls or has the power to control both.

(h) "Wage determination" includes any determination of minimum wage rates or fringe benefits made pursuant to the provisions of sections 2(a) and 4(c) of the Act for application to the employment in a locality of any class or classes of service employees in the performance of any contract in excess of \$2,500 which is subject to the provisions of the Service Contract Act of 1965.

#### § 4.1b Payment of minimum compensation based on collectively bargained wage rates and fringe benefits applicable to employment under predecessor contract.

(a) Section 4(c) of the Service Contract Act of 1965 as amended provides special minimum wage and fringe benefit requirements applicable to every contractor and subcontractor under a contract which succeeds a contract subject to the Act and under which substantially the same services as under the predecessor contract are furnished in the same locality. Section 4(c) provides that no such contractor or subcontractor shall pay any service employee employed on the contract work less than the wages and fringe benefits provided for in a collective bargaining agreement as a result of arms-length negotiations, to which such service employees would have been entitled if they were employed under the predecessor contract, including accrued wages and fringe benefits and any prospective increases in wages and fringe benefits provided for in such collective bargaining agreement. If, however, the Secretary finds after a hearing in accordance with the regulations set forth in § 4.10 of this subpart and Part 6 of this title that in any of the foregoing circumstances such wages and fringe benefits are substantially at variance with those which prevail for service of a character similar in the locality, those wages and/or fringe benefits in such collective bargaining agreement which are found to be substantially at variance shall not apply, and a new wage determination shall be issued.

If the contract has been awarded and work begun prior to a finding that the wages and/or fringe benefits in a collective bargaining agreement are substantially at variance with those

prevailing in the locality, the payment obligation of such contractor or subcontractor with respect to the wages and fringe benefits contained in the new wage determination shall be applicable as of the date of the Administrative Law Judges' decision or, where the decision is appealed, the date of the decision of the Board of Service Contract Appeals. (See also § 4.163(c).)

(b) Pursuant to section 4(b) of the Act, the application of section 4(c) is made subject to the following variation in the circumstances and under the conditions described: The wage rates and fringe benefits provided for in any collective bargaining agreement applicable to the performance of work under the predecessor contract which is consummated during the period of performance of such contract shall not be effective for purposes of the successor contract under the provisions of section 4(c) of the Act or under any wage determination implementing such section issued pursuant to section 2(a) of the Act, if—

(1) In the case of a successor contract for which bids have been invited by formal advertising, notice of the terms of such new or changed collective bargaining agreement is received by the contracting agency less than 10 days before the date set for opening of bids, provided that the contracting agency finds that there is not reasonable time still available to notify bidders; or

(2) Notice of the terms of a new or changed collective bargaining agreement is received by the agency after award of a successor contract to be entered into pursuant to negotiations or as a result of the execution of a renewal option or an extension of the initial contract term, provided that the contract start of performance is within 30 days of such award or renewal option or extension. If the contract does not specify a start of performance date which is within 30 days from the award, and/or performance of such procurement does not commence within this 30-day period, any notice of the terms of a new or changed collective bargaining agreement received by the agency not less than 10 days before commencement of the contract will be effective for purposes of the successor contract under section 4(c); and

(3) The limitations in paragraph (b) (1) or (2) of this section shall apply only if the contracting officer has given both the incumbent (predecessor) contractor and his employees' collective bargaining representative written notification at least 30 days in advance of all applicable estimated procurement dates, including issue of bid solicitation, bid



opening, date of award, commencement of negotiations, receipt of proposals, or the commencement date of a contract resulting from a negotiation, option, or extension, as the case may be.

**§ 4.2 Payment of minimum wage specified in section 6(a)(1) of the Fair Labor Standards Act of 1938 under all service contracts.**

Section 2(b)(1) of the Service Contract Act of 1965 provides in effect that, regardless of contract amount, no contractor or subcontractor performing work under any Federal contract the principal purpose of which is to furnish services through the use of service employees shall pay any of his employees engaged in such work less than the minimum wage specified in section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended (\$2.65 per hour beginning January 1, 1978, \$2.90 per hour beginning January 1, 1979, \$3.10 per hour beginning January 1, 1980, and \$3.35 per hour after December 31, 1980).

**§ 4.3 Wage determinations.**

(a) The minimum monetary wages and fringe benefits for service employees which the Act requires to be specified in contracts and bid solicitations subject to section 2(a) thereof will be set forth in wage determinations issued by the Administrator. Wage determinations shall be issued as soon as administratively feasible for all contracts subject to section 2(a) of the Act, and will be issued for all contracts entered into under which more than 5 service employees are to be employed.

(b) Such wage determinations will set forth for the various classes of service employees to be employed in furnishing services under such contracts in the appropriate localities, minimum monetary wage rates to be paid and minimum fringe benefits to be furnished them during the periods when they are engaged in the performance of such contracts, including, where appropriate under the Act, provisions for adjustments in such minimum rates and benefits to be placed in effect under such contracts at specified future times. The wage rates and fringe benefits set forth in such wage determinations shall be determined in accordance with the provisions of sections 2(a)(1), (2), and (5), 4(c) and 4(d) of the Act from those prevailing in the locality for such employees, with due consideration of the rates that would be paid for direct Federal employment of any classes of such employees whose wages, if federally employed, would be determined as provided in 5 U.S.C. 5341 or 5 U.S.C. 5332, or from pertinent

collective bargaining agreements with respect to the implementation of section 4(c). The wage rates and fringe benefits so determined for any class of service employees to be engaged in furnishing covered contract services in a locality shall be made applicable by contract to all service employees of such class employed to perform such services in the locality under any contract subject to section 2(a) of the Act which is entered into thereafter and before such determination has been rendered obsolete by a withdrawal, modification, or superseding.

(c) Generally, wage determinations issued for solicitations or negotiations for any contract where the place of performance is unknown will contain minimum monetary wages and fringe benefits for the various geographic localities where the work may be performed which were identified in the initial solicitation (see § 4.4(a)(2)(i)).

(d) Wage determinations will be available for public inspection during business hours at the Office of Government Contract Wage Standards, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, and copies will be made available on request at Regional Offices of the Wage and Hour Division.

**§ 4.4 Notice of intention to make a service contract.**

(a)(1) For any contract exceeding \$2,500 which may be subject to the Act, the contracting agency shall file with the Office of Government Contract Wage Standards, Wage and Hour Division, Employment Standards Administration, Department of Labor, its notice of intention to make a service contract. With respect to recurring or known requirements, such notices shall be filed not less than 60 days (nor more than 120 days, except with the approval of the Wage and Hour Division) prior to (1) any invitation for bids, (2) request for proposals, (3) commencement of negotiations, (4) exercise of option or contract extension, (5) annual anniversary date of a multi-year contract subject to annual fiscal appropriations of the Congress, or (6) each biennial anniversary date of a multi-year contract not subject to such annual appropriations, if so authorized by the Wage and Hour Division. (See § 4.4(d).) Notices with regard to solicitations where such planning is not feasible shall be submitted as soon as possible, but not later than 30 days prior to the above contracting actions. Such notice shall be submitted on Standard Form 98, Notice of Intention to Make a Service Contract, and Standard Form 98-A or a statement containing the

information in paragraph (b) of this section and shall be completed in accordance with the instruction provided and shall be supplemented by the information required under paragraphs (c) and (d) of this section. Supplies of Standard Forms 98 and 98-A are available in all GSA supply depots under stock numbers 7540-926-8972 and 7540-118-1008, respectively. If there exists any question or doubt as to the possible application of the Act to a particular procurement, the contracting agency shall submit such question in a timely manner to the Administrator for determination.

(2)(i) Where the place of performance of a contract for services subject to the Act is unknown at the time of solicitation, the solicitation need not initially contain a wage determination. The contracting agency shall, upon identification of firms participating in the procurement in response to an initial solicitation, file with the Office of Government Contract Wage Standards, Wage and Hour Division, Employment Standards Administration, Department of Labor, its notice of intention to make a service contract. In addition to the requirements contained in paragraph (a)(1) of this section, such submission shall identify each location where the work may be performed as indicated by participating firms. Subsequent amendments to the solicitation setting forth the wage determinations and any necessary change in the date and time for submission of final bids shall be made upon receipt of wage determinations. An applicable wage determination must be obtained for each firm participating in the bidding for the location in which it would perform the contract. The appropriate wage determination shall be incorporated in the resultant contract documents and shall be applicable to all work performed thereunder (regardless of whether the successful contractor subsequently changes the place(s) of contract performance).

(ii) There may be extraordinary circumstances, as determined by the Department of Labor upon the request of a contracting agency, where the procedure in paragraph (i) above is not practicable in a particular situation, in which event the Department may authorize a modified procedure which may result in the subsequent issuance of wage determinations for one or more composite localities.

(b) The contracting agency shall file with its Notice of Intention to Make a Service Contract (SF-98) either a Standard Form 98-A or a statement in writing, containing the following



information concerning the service employees expected by the agency to be employed by the contractor and any subcontractors in performing the contract:

(1) The number of such employees of all classes, or a statement indicating whether such number will or will not exceed 5, the number for which the inclusion of a wage determination in the contract is mandatory under the provisions of section 10 of the Act as set forth in § 4.3(a); and

(2) A listing of those classes of service employees expected to be employed under the contract which, if employed by the agency, would be subject to the wage provisions of 5 U.S.C. 5341 or 5 U.S.C. 5332, together with a specification of the rates of wages and fringe benefits that would be paid by the Government to employees of each such class if such statute were applicable to them. (Under section 2(a)(5) of the Act and § 4.6 the inclusion of such a statement in the service contract is also required.)

(c) If the services to be furnished under the proposed contract will be substantially the same as services being furnished in the same locality by an incumbent contractor whose contract the proposed contract will succeed, and if such incumbent contractor is furnishing such services through the use of service employees whose wage rates and fringe benefits are the subject of one or more collective bargaining agreements, the contracting agency shall file with its Notice of Intention to Make a Service Contract (SF-98) a copy of each such collective bargaining agreement together with any related documents specifying the wage rates and fringe benefits currently or prospectively payable under such agreement. If the place of contract performance is unknown, the contracting agency will submit the collective bargaining agreement of the incumbent contractor for incorporation into a wage determination applicable to a potential bidder located in the same geographic area as the predecessor contractor (section 4.4(a)(2)). If such services are being furnished at more than one locality and the collectively bargained wage rates and fringe benefits are different at different localities or do not apply to one or more localities, the agency shall identify the localities to which such agreements have application. If the collective bargaining agreement does not apply to all service employees under the contract, the agency shall identify the employees and/or work subject to the collective bargaining agreement. In the event that the agency has reason to

believe that any such collective bargaining agreement was not entered into as a result of arm's-length negotiations, a full statement of the facts so indicating shall be transmitted with the copy of such agreement. See § 4.11. If the agency has information indicating that any such collectively bargained wage rates and fringe benefits are substantially at variance with those prevailing for services of a similar character in the locality, the agency shall so advise the Office of Government Contract Wage Standards and, if it believes a hearing thereon pursuant to section 4(c) of the Act is warranted, shall file its request for such hearing pursuant to § 4.10 at the time of filing the Notice of Intention to Make a Service Contract (Form SF-98).

(d) If the proposed contract is for a multi-year period subject to other than annual appropriations, the contracting agency shall file with its Standard Form 98 a statement in writing concerning the type of funding and the contemplated term of the proposed contract. Unless otherwise advised by the Wage and Hour Division that a Standard Form 98 must be filed on the annual anniversary date, a new Standard Form 98 shall be submitted on each biennial anniversary date of the proposed multi-year contract in the event its term is for a period in excess of two years.

(e) Any Standard Form 98 submitted by a contracting agency without the information required under paragraphs (b), (c), or (d) of this section will be returned to the agency for further action.

(f) If exceptional circumstances prevent the filing of the notice of intention and supplemental information required by this section on a date at least 60 days (or 30 days in the case of unplanned procurements) prior to any invitation for bids, request for proposals, or commencement of negotiations, the notice shall be submitted to the Office of Government Contract Wage Standards as soon as practicable with a detailed explanation of the special circumstances which prevented timely submission. In the event the proposed contract involves performance by more than 5 service employees and an emergency situation requires an immediate award, the contracting agency shall contact the Office of Government Contract Wage Standards, Wage and Hour Division, by telephone for guidance prior to any such award. In no event may a contract subject to the act on which more than 5 service employees are contemplated to be employed be awarded without an appropriate wage determination. (Section 10 of the Act.)

(g) If any invitation for bids, request for proposals, bid opening, or

commencement of negotiations for a proposed contract for which a wage determination was provided in response to a Standard Form 98 has been delayed, for whatever reason, more than 60 days from the date of such procurement action as on the submitted Standard Form 98, the contracting agency shall contact the Office of Government Contract Wage Standards, Wage and Hour Division, for the purpose of determining whether the wage determination issued pursuant to the initial submission is still current. Any revision of a wage determination received by the contracting agency as a result of such communication or upon discovery by the Department of Labor of a delay, shall supersede and replace the earlier response as the wage determination applicable to such procurement, subject to the time frames set forth in § 4.5(a)(2).

#### § 4.5 Contract specification of determined minimum wages and fringe benefits.

(a) Any contract in excess of \$2,500 shall contain an attachment specifying the minimum wages and fringe benefits for service employees to be employed thereunder, as determined in the applicable currently effective wage determination, including the applicable wage determination contained in any document referred to in paragraphs (a) (1) or (2) of this section:

(1) Any communication from the Office of Government Contract Wage Standards, Wage and Hour Division, Employment Standards Administration, Department of Labor, responsive to the notice required by § 4.4; or

(2) Any revision of a wage determination issued prior to the award of the contract or contracts which specifies minimum wage rates or fringe benefits for classes of service employees whose wages or fringe benefits were not previously covered by wage determinations, or which changes previously determined minimum wage rates and fringe benefits for service employees employed on covered contracts in the locality. However, revisions received by the Federal agency later than 10 days before the opening of bids, in the case of contracts entered into pursuant to competitive bidding procedures, shall not be effective if the Federal agency finds that there is not a reasonable time still available to notify bidders of the revision. In the case of procurements entered into pursuant to negotiations (or in the case of the execution of an option or an extension of the initial contract term), revisions received by the agency after award (or execution of an option or



extension of term, as the case may be) of the contract shall not be effective provided that the contract start of performance is within 30 days of such award (or execution of an option or extension of term). If the contract does not specify a start of performance date which is within 30 days from the award, and/or if performance of such procurement does not commence within this 30-day period, the Department of Labor shall be notified and any notice of a revision received by the agency not less than 10 days before commencement of the contract shall be effective. In situations arising under section 4(c) of the Act, the provisions in § 4.1b(b) apply.

(b)(1) The following exemption from the compensation requirements of section 2(a) of the Act applies, subject to the limitations set forth in paragraphs (b) (2), (3), and (4) of this section: To avoid serious impairment of the conduct of Government business it has been found necessary and proper to provide exemption from the determined wage and fringe benefits section of the Act (section 2(a) (1), (2)) but not the minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended (section 2(b) of this Act), of contracts under which five or less service employees are to be employed, and for which no such wage or fringe benefit determination has been issued;

(2) The exemption provided in paragraph (b)(1) of this section, which was adopted pursuant to section 4(b) of the Act prior to its amendment by Public Law 92-473, does not extend to undetermined wages or fringe benefits in contracts for which one or more, but not all, classes of service employees are the subject of an applicable wage determination. The procedure for determination of wage rates and fringe benefits for any classes of service employees engaged in performing such contracts whose wages and fringe benefits are not specified in the applicable wage determination is set forth in § 4.6(b).

(3) The exemption provided in paragraph (b)(1) of this section does not exempt any contract from the application of the provisions of section 4(c) of the Act as amended, concerning successor contracts.

(c)(1) If the notice of intention required by § 4.4 is not filed with the required supporting documents within the time provided in such section, the contracting agency shall, through the exercise of any and all of its power and authority that may be needed (including, where necessary, its authority to negotiate, its authority to pay any

necessary additional costs, and its authority under any provision of the contract authorizing changes), include in the contract any wage determinations communicated to it by the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, within 30 days of the receipt of such wage determination(s).

(2) Where the Department of Labor discovers and determines, whether before or subsequent to a contract award, that a contracting agency made an erroneous determination that the Service Contract Act did not apply to a particular procurement and/or failed to include an appropriate wage determination in a covered contract, the contracting agency, within 30 days of notification by the Department of Labor, shall include in the contract the stipulations contained in § 4.6 and any applicable wage determination issued by the Administrator or his authorized representative through the exercise of any and all authority that may be needed (including, where necessary, its authority to negotiate or amend, its authority to pay any necessary additional costs, and its authority under any contract provision authorizing changes, cancellation, and termination). (53 Comp. Gen. 412, (1973); *Curtiss-Wright Corp. v. McLucas*, 381 F. Supp. 657 (D N.J. 1974); *Marine Engineers Beneficial Assn., District 2 v. Military Sealift Command*, 86 CCH Labor Cases ¶33,782 (D DC 1979); *Brinks, Inc. v. Board of Governors of the Federal Reserve System*, 466 F. Supp. 112 (D DC 1979), 466 F. Supp. 116 (D DC 1979). (See also 32 CFR 1-403.)

(d) In cases where the contracting agency has filed its SF-98 within the time limits discussed in § 4.4(a) and has not received a response from the Department of Labor, the contracting agency shall, with respect to any contract for which section 10 of the Act and § 4.3 of this Part mandate the inclusion of an applicable wage determination, contact the Office of Government Contract Wage Standards, Wage and Hour Division by telephone for guidance.

#### § 4.6 Labor standards clauses for Federal service contracts exceeding \$2,500.

The clauses set forth in the following paragraphs shall be included in full by the contracting agency in every contract entered into by the United States or the District of Columbia, in excess of \$2,500, or in an indefinite amount, the principal purpose of which is to furnish services through the use of service employees:

(a) Service Contract Act of 1965, as amended: This contract, is subject to the Service Contract Act of 1965, as

amended (41 U.S.C. 351) and is subject to the following provisions and to all other applicable provisions of the Act and regulations of the Secretary of Labor issued thereunder (29 CFR Part 4).

(b)(1) Each service employee employed in the performance of this contract by the contractor or any subcontractor shall be paid not less than the minimum monetary wages and shall be furnished fringe benefits in accordance with the wages and fringe benefits determined by the Secretary of Labor or authorized representative, as specified in any wage determination attached to this contract. Unless specified otherwise in the wage determination, the contractor, where relevant, must consider an employee's length of service with the contractor or with the predecessor contractor(s) on the predecessor contract, if any, in determining the employee's wage and fringe benefit entitlements.

(2)(i) If there is such a wage determination attached to this contract, the contracting officer shall require that any class of service employee which is not listed therein and which is to be employed under the contract (i.e., the work to be performed is not performed by any classification listed in the wage determination), be classified by the contractor so as to provide a reasonable relationship (i.e., appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination. Such conformed class of employees shall be paid the monetary wages and furnished the fringe benefits as are determined pursuant to the procedures in this section.

(ii) Such conforming procedure shall be initiated by the contractor prior to the performance of contract work by such unlisted class of employee and shall be concluded no later than 30 days after such unlisted class of employees performs any contract work. A written report of the proposed conforming action, including evidence in writing of the agreement or disagreement of the authorized representative of the employees involved or, where there is no authorized representative, the employees themselves, shall be promptly submitted by the contractor to the contracting officer who shall review this action. The contracting officer shall promptly submit a report of the action, together with the agency's recommendation and all pertinent information including the position of the contractor and the employees, to the Office of Government Contract Wage Standards, Wage and Hour Division, Employment Standards Administration,



U.S. Department of Labor, for review. The Office of Government Contract Wage Standards will approve, modify, or disapprove the action or render a final determination in the event of disagreement within 30 days of receipt or will notify the contracting officer within 30 days of receipt that additional time is necessary.

(iii) Upon final determination of the conformance action by the Office of Government Contract Wage Standards, each affected employee shall be furnished by the contractor with a written copy of such determination or it shall be posted as a part of the wage determination.

(iv)(A) The process of establishing wage and fringe benefit rates that bear a reasonable relationship to those listed in a wage determination cannot be reduced to any single formula. The approach used may vary from wage determination to wage determination depending on the circumstances. Standard wage and salary administration practices which rank various job classifications by pay grade pursuant to point schemes or other job factors may, for example, be relied upon. Guidance may also be obtained from the way different jobs are rated under Federal pay systems (Federal Wage Board Pay System and the General Schedule) or from other wage determinations issued in the same locality. Basic to the establishment of any conformable wage rate(s) is the concept that a pay relationship should be maintained between job classifications based on the skill required and the duties performed.

(B) In the case of a contract modification, an exercise of an option or extension of an existing contract, or in any other case where a contractor succeeds a contract under which the classification in question was previously conformed pursuant to this section, a new conformed wage rate and fringe benefits may be assigned to such conformed classification by indexing (i.e., adjusting) the previous conformed rate and fringe benefits by an amount equal to the average (mean) percentage increase (or decrease, where appropriate) between the wages and fringe benefits specified for all classifications in the current wage determination and the previously applicable wage determination. Where conforming actions are accomplished in accordance with this subparagraph prior to the performance of contract work by the unlisted class of employees, the contractor need not follow the procedures in paragraph (ii).

(C) No employee engaged in performing work on this contract shall in any event be paid less than the currently

applicable minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended.

(v) The wage rate and fringe benefits finally determined pursuant to subsections (b)(2) (i) and (ii) of this section shall be paid to all employees performing in the classification from the first day on which contract work is performed by them in the classification. Failure to pay such unlisted employees the compensation agreed upon by the interested parties and/or finally determined by the Office of Government Contract Wage Standards retroactive to the date such class of employees commenced contract work shall be a violation of the Act and this contract.

(vi) Upon discovery of failure to comply with subsections (b)(2) (i) through (v) of this section, the Office of Government Contract Wage Standards shall make a final determination of conformed classification, wage rate, and/or fringe benefits which shall be retroactive to the date such class of employees commenced contract work.

(3) If, as authorized pursuant to section 4(d) of the Service Contract Act of 1965 as amended, the term of this contract is more than 1 year, the minimum monetary wages and fringe benefits required to be paid or furnished thereunder to service employees shall be subject to adjustment after 1 year and not less often than once every 2 years, pursuant to wage determinations to be issued by the Wage and Hour Division, Employment Standards Administration of the Department of Labor as provided in such Act.

(c) The contractor or subcontractor may discharge the obligation to furnish fringe benefits specified in the attachment or determined conformably thereto by furnishing any equivalent combinations of bona fide fringe benefits, or by making equivalent or differential payments in cash in accordance with the applicable rules set forth in Subpart D of 29 CFR Part 4, and not otherwise.

(d)(1) In the absence of a minimum wage attachment for this contract, neither the contractor nor any subcontractor under this contract shall pay any person performing work under the contract (regardless of whether they are service employees) less than the minimum wage specified by section 6(a)(1) of the Fair Labor Standards Act of 1938. Nothing in this provision shall relieve the contractor or any subcontractor of any other obligation under law or contract for the payment of a higher wage to any employee.

(2) If this contract succeeds a contract, subject to the Service Contract Act of 1965 as amended under which

substantially the same services were furnished in the same locality and service employees were paid wages and fringe benefits provided for in a collective bargaining agreement, in the absence of the minimum wage attachment for this contract setting forth such collectively bargained wage rates and fringe benefits, neither the contractor nor any subcontractor under this contract shall pay any service employee performing any of the contract work (regardless of whether or not such employee was employed under the predecessor contract), less than the wages and fringe benefits provided for in such collective bargaining agreements, to which such employee would have been entitled if employed under the predecessor contract, including accrued wages and fringe benefits and any prospective increases in wages and fringe benefits provided for under such agreement. No contractor or subcontractor under this contract may be relieved of the foregoing obligation unless the limitations of § 4.1b(b) of 29 CFR Part 4 apply or unless the Secretary of Labor or his authorized representative determines, after a hearing as provided in § 4.11 of 29 CFR Part 4, that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's-length negotiations, or finds, after a hearing as provided in § 4.10 of 29 CFR Part 4 that the wages and/or fringe benefits provided for in such agreement are substantially at variance with those which prevail for services of a character similar in the locality. Where it is found after a hearing in accordance with the review procedures provided in 29 CFR 4.10 and Parts 6 and 8 that some or all of the wages and/or fringe benefits contained in a predecessor contractor's collective bargaining agreement are substantially at variance with those which prevail for services of a character similar in the locality, the Department will issue a new or revised wage determination setting forth the applicable wage rates and fringe benefits. Such determination shall be made part of the contract or subcontract, in accordance with the decision of the Administrative Law Judge, or the Board of Service Contract Appeals, as the case may be, irrespective of whether such issuance occurs prior to or after the award of a contract or subcontract. 53 Comp. Gen. 401 (1973).

(e) The contractor and any subcontractor under this contract shall notify each service employee



commencing work on this contract of the minimum monetary wage and any fringe benefits required to be paid pursuant to this contract, or shall post the wage determination attached to this contract. The poster provided by the Department of Labor (Publication WH 1313) shall be posted in a prominent and accessible place at the worksite. Failure to comply with this requirement is a violation of section 2(a)(4) of the Act and of this contract.

(f) The contractor or subcontractor shall not permit any part of the services called for by this contract to be performed in buildings or surroundings or under working conditions provided by or under the control or supervision of the contractor or subcontractor which are unsanitary or hazardous or dangerous to the health or safety of service employees engaged to furnish these services, and the contractor or subcontractor shall comply with the safety and health standards applied under 29 CFR Part 1925.

(g) The contractor and each subcontractor performing work subject to the Act shall make and maintain for 3 years from the completion of the work records containing the information specified in paragraphs (g)(1) through (5) of this section for each employee subject to the Act and shall make them available for inspection and transcription by authorized representatives of the Wage and Hour Division, Employment Standards Administration of the U.S. Department of Labor:

(1) Name and address and social security number of each employee.

(2) The correct work classification or classifications, rate or rates of monetary wages paid and fringe benefits provided, rate or rates of fringe benefit payments in lieu thereof, and total daily and weekly compensation of each employee.

(3) The number of daily and weekly hours so worked by each employee.

(4) Any deductions, rebates, or refunds from the total daily or weekly compensation of each employee.

(5) A list of monetary wages and fringe benefits for those classes of service employees not included in the wage determination attached to this contract but for which such wage rates or fringe benefits have been determined by the interested parties or by the Administrator or authorized representative pursuant to the labor standards clause in paragraph (b) of this section. A copy of the report required by the clause in paragraph (b)(2)(ii) of this section shall be deemed to be such a list.

(6) Any list of the predecessor contractor's employees which had been

furnished to the contractor pursuant to § 4.6(l)(2).

(7) The contractor shall also make available a copy of this contract for inspection or transcription by authorized representatives of the Wage and Hour Division.

(8) The contractor shall permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the worksite during normal working hours.

Failure to make and maintain or to make available such records for inspection and transcription shall be a violation of the regulations and this contract, and in the case of failure to produce such records, the contracting officer, upon direction of the Department of Labor and notification of the contractor, shall take action to cause suspension of any further payment or advance of funds until such violation ceases.

(h) The contractor shall unconditionally pay to each employee subject to the Act all wages due free and clear and without subsequent deduction (except as otherwise provided by law or Regulations, 29 CFR Part 4), rebate, or kickback on any account. Such payments shall be made no later than one pay period following the end of the regular pay period in which such wages were earned or accrued. A pay period under this Act may not be of any duration longer than semi-monthly.

(i) The contracting officer shall withhold or cause to be withheld from the Government prime contractor under this or any other Government contract with the prime contractor such sums as an appropriate official of the Department of Labor requests or such sums as the contracting officer decides may be necessary to pay underpaid employees employed by the contractor or subcontractor. In the event of failure to pay any employees subject to the Act all or part of the wages or fringe benefits due under the Act, the agency may, after authorization or by direction of the Department of Labor and written notification to the contractor, take action to cause suspension of any further payment or advance of funds until such violations have ceased. Additionally, any failure to comply with the requirements of these clauses relating to the Service Contract Act of 1965, may be grounds for termination of the right to proceed with the contract work. In such event, the Government may enter into other contracts or arrangements for completion of the work, charging the contractor in default with any additional cost.

(j) The contractor agrees to insert these clauses in this section relating to

the Service Contract Act of 1965 in all subcontracts subject to the Act. The term "contractor" as used in these clauses in any subcontract, shall be deemed to refer to the subcontractor, except in the term "Government Prime Contractor."

(k)(1) As used in these clauses, the term "service employee" means any person engaged in the performance of this contract other than any person employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in Part 541 of Title 29, Code of Federal Regulations, as of July 30, 1976, and any subsequent revision of those regulations. The term "service employee" includes all such persons regardless of any contractual relationship that may be alleged to exist between a contractor or subcontractor and such persons.

(2) The following statement is included in contracts pursuant to section 2(a)(5) of the Act and is for informational purposes only:

The following classes of service employees expected to be employed under the contract with the Government would be subject, if employed by the contracting agency, to the provisions of 5 U.S.C. 5341 or 5 U.S.C. 5332 and would, if so employed, be paid not less than the following rates, of wages and fringe benefits:

| Employee class | Monetary wage-fringe benefits |
|----------------|-------------------------------|
|                |                               |
|                |                               |
|                |                               |
|                |                               |

(l)(1) If wages to be paid or fringe benefits to be furnished any service employees employed by the Government prime contractor or any subcontractor under the contract are provided for in a collective bargaining agreement which is or will be effective during any period in which the contract is being performed, the Government prime contractor shall report such fact to the contracting officer, together with full information as to the application and accrual of such wages and fringe benefits, including any prospective increases, to service employees engaged in work on the contract, and a copy of the collective bargaining agreement. Such report shall be made upon commencing performance of the contract, in the case of collective bargaining agreements effective at such time, and in the case of such agreements or provisions or amendments thereof effective at a later time during the period of contract performance, such



agreements shall be reported promptly after negotiation thereof.

(2) Not less than 10 days prior to completion of any contract being performed at a Federal facility where service employees may be retained in the performance of the succeeding contract and subject to a wage determination which contains vacation or other benefit provisions based upon length of service with a contractor (predecessor) or successor (§ 4.173 of Regulations, 29 CFR Part 4), the incumbent prime contractor shall furnish to the contracting officer a certified list of the names of all service employees on the contractor's or subcontractor's payroll during the last month of contract performance. Such list shall also contain anniversary dates of employment on the contract either with the current or predecessor contractors of each such service employee. The contracting officer shall turn over such list to the successor contractor at the commencement of the succeeding contract.

(m) Rulings and interpretations of the Service Contract Act of 1965, as amended, are contained in Regulations, 29 CFR Part 4.

(n)(1) By entering into this contract, the contractor (and officials thereof) certifies that neither it (nor he or she) nor any person or firm who has a substantial interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of the sanctions imposed pursuant to section 5 of the Act.

(2) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract pursuant to section 5 of the Act.

(3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(o) Notwithstanding any of the clauses in paragraphs (b) through (m) of this section relating to the Service Contract Act of 1965, the following employees may be employed in accordance with the following variations, tolerances, and exemptions, which the Secretary of Labor, pursuant to section 4(b) of the Act prior to its amendment by Public Law 92-473, found to be necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business:

(i) Apprentices, student-learners, and workers whose earning capacity is impaired by age, physical, or mental deficiency or injury may be employed at wages lower than the minimum wages otherwise required by section 2(a)(1) or 2(b)(1) of the Service Contract Act without diminishing any fringe benefits or cash payments in lieu thereof

required under section 2(a)(2) of that Act, in accordance with the conditions and procedures prescribed for the employment of apprentices, student-learners, handicapped persons, and handicapped clients of sheltered workshops under section 14 of the Fair Labor Standards Act of 1938, in the regulations issued by the Administrator (29 CFR Parts 520, 521, 524, and 525).

(ii) The Administrator will issue certificates under the Service Contract Act for the employment of apprentices, student-learners, handicapped persons, or handicapped clients of sheltered workshops not subject to the Fair Labor Standards Act of 1938, or subject to different minimum rates of pay under the two acts, authorizing appropriate rates of minimum wages (but without changing requirements concerning fringe benefits or supplementary cash payments in lieu thereof), applying procedures prescribed by the applicable regulations issued under the Fair Labor Standards Act of 1938 (29 CFR Parts 520, 521, 524, and 525).

(iii) The Administrator will also withdraw, annul, or cancel such certificates in accordance with the regulations in Parts 525 and 528 of Title 29 of the Code of Federal Regulations.

(p) Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed and individually registered in a bona fide apprenticeship program registered with a State Apprenticeship Agency which is recognized by the U.S. Department of Labor, or if no such recognized agency exists in a State, under a program registered with the Bureau of Apprenticeship and Training, Employment and Training Administration, U.S. Department of Labor. Any employee who is not registered as an apprentice in an approved program shall be paid the wage rate and fringe benefits contained in the applicable wage determination for the journeyman classification of work actually performed. The wage rates paid apprentices shall not be less than the wage rate for their level of progress set forth in the registered program, expressed as the appropriate percentage of the journeyman's rate contained in the applicable wage determination. The allowable ratio of apprentices to journeymen employed on the contract work in any craft classification shall not be greater than the ratio permitted to the contractor as to his entire work force under the registered program.

(q) An employee engaged in an occupation in which he or she customarily and regularly receives more than \$30 a month in tips may have the amount of tips credited by the employer

against the minimum wage required by section 2(a)(1) or section 2(b)(1) of the Act in accordance with section 3(m) of the Fair Labor Standards Act and Regulations, 29 CFR Part 531: Provided, however, That the amount of such credit may not exceed \$1.24 per hour beginning January 1, 1980, and \$1.34 per hour after December 31, 1980. To utilize this proviso:

(1) The employer must inform tipped employees about this tip credit allowance before the credit is utilized;

(2) The employees must be allowed to retain all tips (individually or through a pooling arrangement and regardless of whether the employer elects to take a credit for tips received);

(3) The employer must be able to show by records that the employee receives at least the applicable Service Contract Act minimum wage through the combination of direct wages and tip credit;

(4) The use of such tip credit must have been permitted under any predecessor collective bargaining agreement applicable by virtue of section 4(c) of the Act.

#### **§ 4.7 Labor standards clause for Federal service contracts not exceeding \$2,500.**

Every contract with the Federal Government which is not in excess of \$2,500 but has as its principal purpose the furnishing of services through the use of service employees shall contain the following clause:

*Service Contract Act.* Except to the extent that an exemption, variation or tolerance would apply if this were a contract in excess of \$2,500, the contractor and any subcontractor hereunder shall pay all of his employees engaged in performing work on the contract not less than the minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended. Regulations and interpretations of the Service Contract Act of 1965, as amended, are contained in 29 CFR Part 4.

#### **§ 4.8 Notice of awards.**

Whenever an agency of the United States or the District of Columbia awards a contract subject to the Act which may be in excess of \$2,500, it shall furnish the Office of Government Contract Wage Standards, Wage and Hour Division, ESA, an original and one copy of Standard Form 99, Notice of Award of Contract. The form shall be completed as follows:

(a) Items 1 through 7 and 12 and 13: Self-explanatory;

(b) Item 8: Enter the notation "Service Contract Act;"



(c) Item 9: Leave blank;

(d) Item 10: (1) Enter the notation "Major Category," and indicate beside this entry the general service area into which the contract falls (e.g., food services, grounds maintenance, computer services, installation or facility support services, custodial-janitorial service, garbage collection, insect and rodent control, laundry and drycleaning services, etc.);

(e) Item 11: Enter the dollar amount of the contract, or the estimated dollar value with the notation "estimated" (if the exact amount is not known). If neither the exact nor the estimated dollar value is known, enter "indefinite," or "not to exceed \$—." Supplies of Standard Form 99 are available in all GSA supply depots under stock number 7540-634-4049.

#### § 4.9 (Reserved)

#### § 4.10 Substantial variance proceedings under section 4(c) of the Act.

(a) *Statutory provision.* Under section 4(c) of the Act, and under corresponding wage determinations made as provided in section 2(a) (1) and (2) of the Act, contractors and subcontractors performing contracts subject to the Act generally are obliged to pay to service employees employed on the contract work wages and fringe benefits not less than those to which they would have been entitled under a collective bargaining agreement if they were employed on like work under a predecessor contract in the same locality. (See §§ 4.1b, 4.3, 4.6(d)(2).) Section 4(c) of the Act provides, however, that "such obligations shall not apply if the Secretary finds after a hearing in accordance with regulations adopted by the Secretary that such wages and fringe benefits are substantially at variance with those which prevail for services of a character similar in the locality".

(b) *Prerequisites for hearing.* (1)(i) A request for a hearing under this section may be made by the contracting agency or other person affected or interested, including contractors or prospective contractors and associations of contractors, representatives of employees, and other interested Governmental agencies. Such a request shall be submitted in writing to the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210, to the attention of the Office of Government Contract Wage Standards, and shall include the following:

(A) The number of any wage determination at issue, the name of the

contracting agency whose contract is involved, and a brief description of the services to be performed under the contract;

(B) A statement regarding the status of the procurement and any estimated procurement dates, such as bid opening, contract award, commencement date of the contract or its follow-up option period;

(C) A statement of the applicant's case, setting forth in detail the reasons why the applicant believes that a substantial variance exists with respect to some or all of the wages and/or fringe benefits, attaching available data concerning wages and/or fringe benefits prevailing in the locality;

(D) Names and addresses (to the extent known) of interested parties.

(ii) If the information in paragraph (b)(1)(i) of this section is not submitted with the request, the Administrator may deny the request or request supplementary information, at his/her discretion. No particular form is prescribed for submission of a request under this section.

(2) No hearing will be provided pursuant to this section and section 4(c) of the Act unless the Administrator determines from information available or submitted with a request for such a hearing that there may be a substantial variance between some or all of the wage rates and/or fringe benefits provided for in a collective bargaining agreement to which the service employees would otherwise be entitled by virtue of the provisions of section 4(c) of the Act, and those which prevail for services of a character similar in the locality.

(3) Pursuant to section 4(b) of the Act, requests for a hearing shall not be considered unless received as specified below, except in those situations where the Administrator determines that extraordinary circumstances exist:

(i) For advertised contracts, prior to ten days before the award of the contract;

(ii) For negotiated contracts and for contracts with provisions extending the initial term by option, prior to the commencement date of the contract or the follow-up option period, as the case may be.

(c) *Referral to the Chief Administrative Law Judge.* When the Administrator determines from the information available or submitted with a request for a hearing that there may be a substantial variance, the Administrator on his own motion or on application of any interested person may by order refer the issue to the Chief Administrative Law Judge, for designation of an Administrative Law

Judge who shall conduct such a fact finding hearing as may be necessary to render a decision solely on the issue of whether the wages and/or fringe benefits contained in the collective bargaining agreement which was the basis for the wage determination at issue are substantially at variance with those which prevail for services of a character similar in the locality. However, in situations where there is also a question as to whether the collective bargaining agreement was reached as a result of "arm's-length negotiations" (see § 4.11), the referral shall include both issues for resolution in one proceeding. No authority is delegated under this section to hear and/or decide any other issues pertaining to the Service Contract Act. As provided in section 4(a) of the Act, the provisions of §§ 4 and 5 of the Walsh-Healey Public Contracts Act (41 U.S.C. 38, 39) shall be applicable to such proceeding, which shall be conducted in accordance with the procedures set forth at 29 CFR Part 6, Subpart B.

(d) The Administrator shall be an interested party and shall have the opportunity to participate in the proceeding to the degree he/she considers appropriate.

#### § 4.11 Arm's length proceedings.

(a) *Statutory provision.* Under Section 4(c) of the Act, the wages and fringe benefits provided in the predecessor contractor's collective bargaining agreement must be reached "as a result of arm's-length negotiations." This provision precludes arrangements by parties to a collective bargaining agreement who, either separately or together, act to take advantage of the wage determination scheme provided for in Sections 2(a) and 4(c) of the Act. Decisions under the National Labor Relations Act, as amended, regarding "good faith" bargaining may be used as guidance in the determination of whether "arm's length" negotiations have occurred. See also, *Trinity Services, Inc. v. Marshall*, 593 F.2d 1250 (D.C. Cir. 1978). In situations where it has been determined by the National Labor Relations Board that "good faith" bargaining did not occur, the Administrator shall issue a decision based on that finding and that decision shall be final and not subject to appeal. A finding as to whether a collective bargaining agreement or particular wages and fringe benefits therein are reached as a result of arm's-length negotiations may be made through investigation, hearing or otherwise pursuant to the Secretary's authority under Section 4(a) of the Act.



(b)(1) A request for a determination under this section may be made by a contracting agency or other person affected or interested, including contractors or prospective contractors and associations of contractors, representatives of employees, and interested Governmental agencies. Such a request shall be submitted in writing to the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210, to the attention of the Office of Government Contract Wage Standards. Although no particular form is prescribed for submission of a request under this section, such request shall include the following information:

(i) A statement of the applicant's case setting forth in detail the reasons why the applicant believes that the wages and fringe benefits contained in the collective bargaining agreement were not reached as a result of arm's-length negotiations;

(ii) A statement regarding the status of the procurement and any estimated procurement dates, such as bid opening, contract award, commencement date of the contract or its follow-up option period;

(iii) Names and addresses (to the extent known) of interested parties.

(2) Pursuant to Section 4(b) of the Act, requests for a hearing shall not be considered unless received as specified below except in those situations where the Administrator determines that extraordinary circumstances exist:

(i) For advertised contracts, prior to ten days before the award of the contract;

(ii) For negotiated contracts and for contracts with provisions extending the term by option, prior to the commencement date of the contract or the follow-up option period, as the case may be.

(c)(1) The Administrator, on his/her own motion or after receipt of a request for a determination, may make a finding on the issue of arm's-length negotiations.

(2) If the Administrator determines that there may not have been arm's-length negotiations, but finds that there is insufficient evidence to render a final decision thereon, the Administrator may refer the issue to the Chief Administrative Law Judge in accordance with subsection (d).

(3)(i) If the Administrator finds that the collective bargaining agreement or wages and fringe benefits at issue were reached as a result of arm's-length negotiations or that arm's-length negotiations did not take place, the interested parties, including the parties to the collective bargaining agreement,

will be notified of the Administrator's findings, which shall include the reasons therefor, and such parties shall be afforded an opportunity to request that a hearing be held to render a decision on the issue of arm's-length negotiations.

(ii) Such parties shall have 20 days from the date of the Administrator's ruling to request a hearing. A detailed statement of the reasons why the Administrator's ruling is in error, including facts alleged to be in dispute, if any, shall be submitted with the request for a hearing.

(iii) If no hearing is requested within the time mentioned in paragraph (c)(3)(ii) of this section above, the Administrator's ruling shall be final, and, in the case of a finding that arm's-length negotiations did not take place, a new wage determination will be issued for the contract. If a hearing is requested, the decision of the Administrator shall be inoperative.

(d) Referral to the Chief Administrative Law Judge. The Administrator on his/her own motion, under paragraph (c)(2) or upon a request for a hearing under paragraph (c)(3)(ii) where the Administrator determines that material facts are in dispute, shall by order refer the issue to the Chief Administrative Law Judge for designation of an Administrative Law Judge, who shall conduct such hearings as may be necessary to render a decision solely on the issue of arm's-length negotiations. However, in situations where there is also a question as to whether some or all of the collectively bargained wage rates and/or fringe benefits are substantially at variance (see § 4.10), the referral shall include both issues for resolution in one proceeding. As provided in Section 4(a) of the Act, the provisions of Sections 4 and 5 of the Walsh-Healey Public Contracts Act (41 U.S.C. 38, 39) shall be applicable to such proceeding, which shall be conducted in accordance with the procedures set forth at 29 CFR Part 6.

(e) Referral to the Board of Service Contract Appeals. When a party requests a hearing under paragraph (c)(3)(ii) and the Administrator determines that no material facts are in dispute, the Administrator shall refer the issue and the record compiled thereon to the Board of Service Contract Appeals to render a decision solely on the issue of arm's-length negotiations. Such proceeding shall be conducted in accordance with the procedures set forth at 29 CFR Part 8.

#### § 4.12 Substantial interest proceedings

(a) *Statutory provision.* Under Section 5(a) of the Act, no contract of the United

States (or the District of Columbia) shall be awarded to the persons or firms appearing on the list distributed by the Comptroller General giving the names of persons or firms who have been found to have violated the Act until 3 years have elapsed from the date of publication of the list. Section 5(a) further states that "no contract of the United States shall be awarded \* \* \* to any firm, corporation, partnership, or association in which such persons or firms have a substantial interest \* \* \*." A finding as to whether persons or firms whose names appear on the debarred bidders list have a substantial interest in any other firm, corporation, partnership, or association may be made through investigation, hearing, or otherwise pursuant to the Secretary's authority under Section 4(a) of the Act.

(b) *Ineligibility.* See § 4.188 of this part for the Secretary's rulings and interpretations with respect to substantial interest.

(c)(1) A request for a determination under this section may be made by any interested party, including contractors or prospective contractors, and associations of contractors, representatives of employees, and interested Government agencies. Such a request shall be submitted in writing to the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210, to the attention of the Office of Government Contract Wage Standards.

(2) The request shall include a statement setting forth in detail why the petitioner believes that a person or firm whose name appears on the debarred bidders list has a substantial interest in any firm, corporation, partnership, or association which is seeking or has been awarded a contract of the United States or the District of Columbia. No particular form is prescribed for the submission of a request under this section.

(d)(1) The Administrator, on his/her own motion or after receipt of a request for a determination, may make a finding on the issue of substantial interest.

(2) If the Administrator determines that there may be a substantial interest, but finds that there is insufficient evidence to render a final ruling thereon, the Administrator may refer the issue to the Chief Administrative Law Judge in accordance with subsection (e).

(3) If the Administrator finds that no substantial interest exists, or that there is not sufficient information to warrant the initiation of an investigation, the requesting party, if any, will be so notified and no further action taken.



(4)(i) If the Administrator finds that a substantial interest exists, the person or firm affected will be notified of the Administrator's finding, which shall include the reasons therefor, and such person or firm shall be afforded an opportunity to request that a hearing be held to render a decision on the issue of substantial interest.

(ii) Such person or firm shall have 20 days from the date of the Administrator's ruling to request a hearing. A detailed statement of the reasons why the Administrator's ruling is in error, including facts alleged to be in dispute, if any, shall be submitted with the request for a hearing.

(iii) If no hearing is requested within the time mentioned in subparagraph (ii) above, the Administrator's finding shall be final and the Administrator shall so notify the Comptroller General. If a hearing is requested, the decision of the Administrator shall be inoperative unless and until the Administrative Law Judge or the Secretary issues an order that there is a substantial interest.

(e) *Referral to the Chief Administrative Law Judge.* The Administrator on his/her own motion, or upon a request for a hearing where the Administrator determines that relevant facts are in dispute, shall by order refer the issue to the Chief Administrative Law Judge, for designation of an Administrative Law Judge who shall conduct such hearings as may be necessary to render a decision solely on the issue of substantial interest. As provided in Section 4(a) of the Act, the provisions of Sections 4 and 5 of the Walsh-Healey Public Contracts Act (41 U.S.C. 38, 39) shall be applicable to such proceedings, which shall be conducted in accordance with the procedures set forth at 29 CFR Part 6.

(f) *Referral to the Board of Service Contract Appeals.* When the person or firm requests a hearing and the Administrator determines that relevant facts are not in dispute, the Administrator will refer the issue and the record compiled thereon to the Board of Service Contract Appeals to render a decision solely on the issue of substantial interest. Such proceeding shall be conducted in accordance with the procedures set forth at 29 CFR Part 8.

## Subpart B—Wage Determination Procedures

### § 4.50 Types of wage and fringe benefit determinations.

The Administrator specifies the minimum monetary wages and fringe benefits to be paid as required under the Act in two types of determinations:

(a) *Prevailing in the Locality.* Determinations that set forth minimum monetary wages and fringe benefits determined to be prevailing for various classes of service employees in the locality (sections 2(a)(1) and 2(a)(2) of the Act) after giving "due consideration" to the rates applicable to such service employees if directly hired by the Federal Government (section 2(a)(5) of the Act); and

(b) *Collective Bargaining Agreement—(Successorship).* Determinations that set forth the wage rates and fringe benefits, including accrued and prospective increases, contained in a collective bargaining agreement applicable to the service employees who performed on a predecessor contract in the same locality.

### § 4.51 Prevailing in the locality determinations.

(a) *Information considered.* The minimum monetary wages and fringe benefits set forth in determinations of the Secretary are based on all available pertinent information as to wage rates and fringe benefits being paid at the time the determination is made. Such information is most frequently derived from area surveys made by the Bureau of Labor Statistics, U.S. Department of Labor, or other Labor Department personnel. Information may also be obtained from Government contracting officers and from other available sources, including employees and their representatives and employers and their associations. The determinations may be based on the wage rates and fringe benefits contained in collective bargaining agreements where they have been determined to prevail in a locality for specified occupational class(es) of employees.

(b) *Determination of Prevailing Rates.* Where a single rate is paid to a majority (50 percent or more) of the workers in a class of service employees engaged in similar work in a particular locality, that rate is determined to prevail. The wage rates and fringe benefits in a collective bargaining agreement covering 2,001 janitors in a locality, for example, prevail if it is determined that no more than 4,000 workers are engaged in such janitorial work in that locality. In the case of information developed from surveys, statistical measurements of central tendency such as a median (a point in a distribution of wage rates where 50 percent of the surveyed workers receive that or a higher rate and an equal number receive a lesser rate) or the mean (average) are considered reliable indicators of the prevailing rate. Which of these statistical measurements

will be applied in a given case will be determined after a careful analysis of the overall survey, separate classification data, patterns existing between survey periods, and the way the separate classification data interrelate. Use of the median is the general rule. However, the mean (average) rate may be used in situations where, after analysis, it is determined that the median is not a reliable indicator. Examples where the mean may be used include situations where:

(1) The number of workers studied for the job classification constitutes a relatively small sample and the computed median results in an actual rate that is paid to few of the studied workers in the class;

(2) Statistical deviation such as a skewed (bimodal or multimodal) frequency distribution biases the median rate due to large concentrations of workers toward either end of the distribution curve and the computed median results in an actual rate that is paid to few of the studied workers in the class; or

(3) The computed median rate distorts historic wage relationships between job levels within a classification family, (i.e., Electronic Technician Classes A, B, and C levels within the Electronic technician classification family), between classifications of different skill levels (i.e., a maintenance electrician as compared with a maintenance carpenter), or, for example, yields a wage movement inconsistent with the pattern shown by the survey overall or with related and/or similarly skilled job classifications.

(c) *Slotting wage rates.* In some instances, a wage survey for a particular locality may result in insufficient data for one or more job classifications that are required in the performance of a contract. Establishment of a prevailing wage rate for certain such classifications may be accomplished through a "slotting" procedure, such as that used under the Federal pay system. Under this procedure, wage rates are derived for a classification based on a comparison of equivalent or similar job duty and skill characteristics between the classifications studied and those for which no survey data is available. As an example, a wage rate found prevailing for the janitorial classification may be adopted for the classification of mess attendant if the skill and duties attributed to each classification are known to be rated similarly under pay classification schemes. (Both classifications are assigned the same wage grade under the Coordinated Federal Wage System and are paid at



the Wage Board grade 2 when hired directly by a Federal agency.)

(d) *Due consideration.* In making wage and fringe benefit determinations, section 2(a)(5) of the Act requires that due consideration be given to the rates that would be paid by the Federal agency to the various classes of service employees if § 5341 or § 5332 of Title 5, United States Code, were applicable to them. Section 5341 refers to the Wage Board or Coordinated Federal Wage System for "blue collar" workers and § 5332 refers to the General Schedule pay system for "white collar" workers. The term "due consideration" implies the exercise of discretion on the basis of the facts and circumstances surrounding each determination, recognizing the legislative objective of narrowing the gap between the wage rates and fringe benefits prevailing for service employees and those established for Federal employees. Each wage determination is based on a survey or other information on the wage rates and fringe benefits being paid in a particular locality and also takes into account those wage rates and fringe benefits which would be paid under Federal pay systems.

#### § 4.52 Collective bargaining agreement (successorship) determinations.

Determinations based on the collective bargaining agreement of a predecessor contractor set forth by job classification each provision relating to wages (such as the established straight time hourly or salary rate, cost-of-living allowance, and any shift, hazardous, and other similar pay differentials) and to fringe benefits (such as holiday pay, vacation pay, sick leave pay, life, accidental death, disability, medical, and dental insurance plans, retirement or pension plans, severance pay, supplemental unemployment benefits, saving and thrift plans, stock-option plans, funeral leave, jury/witness leave, or military leave) contained in the predecessor's collective bargaining agreement, as well as conditions governing the payment of such wages and fringe benefits. Accrued wages and fringe benefits and prospective increases therein are also included. Each wage determination is limited in application to a specific contract succeeding a contract which had been performed in the same locality by a contractor with a collective bargaining agreement, and contains a notice to prospective bidders regarding their obligations under section 4(c) of the Act.

#### § 4.53 Locality basis of wage and fringe benefit determinations.

(a) Under section 2(a) of the Act, the Secretary or his authorized representative is given the authority to determine the minimum monetary wages and fringe benefits prevailing for various classes of service employees "in the locality". Although the term "locality" has reference to a geographic area, it has an elastic and variable meaning and contemplates consideration of the existing wage structures which are pertinent to the employment of particular classes of service employees on the varied kinds of service contracts. Because wage structures are extremely varied, there can be no precise single formula which would define the geographic limits of a "locality" that would be relevant or appropriate for the determination of prevailing wage rates and prevailing fringe benefits in all situations under the Act. The locality within which a wage or fringe benefit determination is applicable is, therefore, defined in each such determination upon the basis of all the facts and circumstances pertaining to that determination. Locality is ordinarily limited geographically to a particular county or cluster of counties comprising a metropolitan area. For example, a survey by the Bureau of Labor Statistics of the Baltimore, Maryland Standard Metropolitan Statistical Area includes the counties of Baltimore, Harford, Howard, Anne Arundel, and the City of Baltimore. A wage determination based on such information would define locality as the same geographic area included within the scope of the survey. Locality may also be defined as, for example, a city, a State, or, under rare circumstances, a region, depending on the actual place or places of contract performance, the geographical scope of the data on which the determination was based, the nature of the services being contracted for, and the procurement method used. In addition, in *Southern Packaging & Storage Co. v. United States*, 618 F.2d 1088 (4th Cir. 1980), the court held that a nationwide wage determination normally is not permissible under the Act, but postulated that "there may be the rare and unforeseen service contract which might be performed at locations throughout the country and which would generate truly nationwide competition".

(b) Where the services are to be performed for a Federal agency at the site of the successful bidder, in contrast to services to be performed at a specific Federal facility or installation, or in the locality of such installation, the location where the work will be performed often

cannot be ascertained at the time of bid advertisement. In such instances, wage determinations will generally be issued for each locality identified by the agency as set forth in § 4.4(a)(2)(i).

(c) Where the wage rates and fringe benefits contained in a collective bargaining agreement applicable to the predecessor contract are set forth in a determination, locality in such a determination is typically described as the geographic area in which the predecessor contract was performed. The determination applies to any successor contractor, which performs the contract in the same locality.

#### § 4.54 Issuance and revision of wage determinations.

(a) Section 4.4 of Subpart A requires that the awarding agency file a notice of intention to make a service contract which is subject to the Act with the Office of Government Contract Wage Standards, Wage and Hour Division, Employment Standards Administration, prior to any invitation for bids or the commencement of negotiations for any contract exceeding \$2,500. Upon receipt of the notice, the Office of Government Contract Wage Standards may issue a new determination of minimum monetary wages and fringe benefits for the classes of service employees who will perform work on the contract or may revise a determination which is currently in effect.

(b) Determinations will be reviewed periodically and where prevailing wage rates or fringe benefits have changed, such changes will be reflected in revised determinations. For example, in a locality where it is determined that the wage rate which prevails for a particular class of service employees is the rate specified in a collective bargaining agreement(s) applicable in that locality, and such agreement(s) specifies increases in such rates to be effective on specific dates, the determinations would be revised to reflect such changes as they become effective. Revised determinations shall be applicable to contracts in accordance with the provisions of § 4.5(a)(2) of Subpart A.

(c) Determinations issued by the Office of Government Contract Wage Standards with respect to particular contracts are required to be incorporated in the invitations for bids or requests for proposals or quotations issued by the contracting agencies, and are to be incorporated in the contract specifications in accordance with § 4.5 of Subpart A. In this manner, prospective contractors and subcontractors are advised of the minimum monetary wages and fringe



benefits required under the most recently applicable determination to be paid the service employees who perform the contract work. These requirements are, of course, the same for all bidders so none will be placed at a competitive disadvantage.

#### § 4.55 Review and reconsideration of wage determinations.

(a) *Review by the Administrator.* (1) Any interested party affected by a wage determination issued under section 2(a) of the Act may request review and reconsideration by the Administrator. A request for review and reconsideration may be made by the contracting agency or other interested party, including contractors or prospective contractors and associations of contractors, representatives of employees, and other interested Governmental agencies. Any such request must be accompanied by supporting evidence. In no event shall a request for review of any aspect of a wage determination, including its accuracy or its applicability, be considered after the opening of bids in the case of a competitively advertised procurement, or after the commencement of a contract in the case of a negotiated procurement. This limitation is necessary in order to ensure competitive equality and an orderly procurement process.

(2) The Administrator shall, upon receipt of a request for reconsideration, review the data sources relied upon as a basis for the wage determination, the evidence furnished by the party requesting review or reconsideration, and, if necessary to resolve the matter, any additional information found to be relevant to determining prevailing wage rates and fringe benefits in a particular locality. The Administrator, pursuant to a review of available information, may issue a new wage determination, may cause the wage determination to be revised, or may affirm the wage determination issued, and will notify the requesting party in writing of the action taken. The Administrator will render a decision within 30 days of receipt of the request or will notify the requesting party in writing within 30 days of receipt that additional time is necessary.

(b) *Review by the Board of Service Contract Appeals.* Any decision of the Administrator under paragraph (a) of this section may be appealed to the Board of Service Contract Appeals within 20 days of issuance of the Administrator's decision. Any such appeal shall be in accordance with the provisions of Part 8 of this title.

### Subpart C—Application of the McNamara-O'Hara Service Contract Act

#### Introductory

##### § 4.101 Official rulings and interpretations in this subpart.

(a) The purpose of this subpart is to provide, pursuant to the authority cited in § 4.102, official rulings and interpretations with respect to the application of the McNamara-O'Hara Service Contract Act for the guidance of the agencies of the United States and the District of Columbia which may enter into and administer contracts subject to its provisions, the persons desiring to enter into such contracts with these agencies, and the contractors, subcontractors, and employees who perform work under such contracts.

(b) These rulings and interpretations are intended to indicate the construction of the law and regulations which the Department of Labor believes to be correct and which will be followed in the administration of the Act unless and until directed otherwise by Act of Congress or by authoritative ruling of the courts, or if it is concluded upon reexamination of an interpretation that it is incorrect. See for example, *Skidmore v. Swift & Co.*, 323 U.S. 134 (1944); *Roland Co. v. Walling*, 326 U.S. 657 (1946); *Endicott Johnson Corp. v. Perkins*, 317 U.S. 501, 507-509 (1943); *Perkins v. Lukens Steel Co.*, 310 U.S. 113, 128 (1940); *United States v. Western Pacific Railroad Co.*, 352 U.S. 59 (1956). The Department of Labor (and not the contracting agencies) has the primary and final authority and responsibility for administering and interpreting the Act, including making determinations of coverage. See *Woodside Village v. Secretary of Labor*, 611 F.2d 312 (9th Cir. 1980); *Nello L. Teer Co. v. United States*, 348 F.2d 533, 539-540 (Ct. Cl. 1965), cert. denied, 383 U.S. 934 (Davis-Bacon Act); *North Georgia Building & Construction Trades Council v. U.S. Department of Transportation*, 399 F. Supp. 58, 63 (N.D. Ga. 1975) (Davis-Bacon Act); *Zachry Co. v. United States*, 344 F.2d 352 (Ct. Cl. 1965) (Davis-Bacon Act); *Curtiss-Wright Corp. v. McLucas*, 364 F. Supp. 750, 769-72 (D.N.J. 1973); and 43 Att'y. Gen. Ops. — (March 9, 1979); 53 Comp. Gen. 647, 649-51 (1974); 57 Comp. Gen. 501, 506 (1978).

(c) Court decisions arising under the Act (as well as under related remedial labor standards laws such as the Walsh-Healey Public Contracts Act, the Davis-Bacon Act, the Contract Work Hours and Safety Standards Act, and the Fair Labor Standards Act) which support policies and interpretations contained in

this part are cited where it is believed that they may be helpful. On matters which have not been authoritatively determined by the courts, it is necessary for the Secretary of Labor and the Administrator to reach conclusions as to the meaning and the application of provisions of the law in order to carry out their responsibilities of administration and enforcement (*Skidmore v. Swift & Co.*, 323 U.S. 134 (1944)). In order that these positions may be made known to persons who may be affected by them, official interpretations and rulings are issued by the Administrator with the advice of the Solicitor of Labor, as authorized by the Secretary (Secretary's Order No. 16-75, Nov. 21, 1975, 40 FR 55913; Employment Standards Order No. 2-76, Feb. 23, 1976, 41 FR 9016). These interpretations are a proper exercise of the Secretary's authority. *Idaho Sheet Metal Works v. Wirtz*, 383 U.S. 190, 208 (1966), reh. den. 383 U.S. 963 (1966). References to pertinent legislative history, decisions of the Comptroller General and of the Attorney General, and Administrative Law Judges' decisions are also made in this part where it appears they will contribute to a better understanding of the stated interpretations and policies.

(d) The interpretations of the law contained in this part are official interpretations which may be relied upon. The Supreme Court has recognized that such interpretations of the Act "provide a practical guide to employers and employees as to how the office representing the public interest in its enforcement will seek to apply it" and "constitute a body of experience and informed judgment to which courts and litigants may properly resort for guidance" (*Skidmore v. Swift & Co.*, 323 U.S. 134 (1944)). Interpretations of the agency charged with administering an Act are generally afforded deference by the courts. (*Griggs v. Duke Power Co.*, 401 U.S. 424, 433-34 (1971); *Udall v. Tallman*, 380 U.S. 1 (1965).) Some of the interpretations in this part relating to the application of the Act are interpretations of provisions which appeared in the original Act before its amendments in 1972 and 1976. Accordingly, the Department of Labor considers these interpretations to be correct, since there were no amendments of the statutory provisions which they interpret. (*United States v. Davison Fuel & Dock Co.*, 371 F.2d 705, 711-12 (C.A. 4, 1967).)

(e) On and after final publication of this part in the Federal Register, the interpretations contained herein shall be in effect and shall remain in effect until they are modified, rescinded, or



withdrawn. This part supersedes and replaces certain interpretations previously published in the *Federal Register* and Code of Federal Regulations as Part 4 of this chapter. Prior opinions, rulings, and interpretations and prior enforcement policies which are not inconsistent with the interpretations in this part or with the Act as amended are continued in effect; all other opinions, rulings, interpretations, and enforcement policies on the subjects discussed in the interpretations in this part, to the extent they are inconsistent with the rules herein stated, are superseded, rescinded, and withdrawn.

(f) Principles governing the application of the Act as set forth in this subpart are clarified or amplified in particular instances by illustrations and examples based on specific fact situations. Since such illustrations and examples cannot and are not intended to be exhaustive, or to provide guidance on every problem which may arise under the Act, no inference should be drawn from the fact that a subject or illustration is omitted.

(g) It should not be assumed that the lack of discussion of a particular subject in this subpart indicates the adoption of any particular position by the Department of Labor with respect to such matter or to constitute an interpretation, practice, or enforcement policy. If doubt arises or a question exists, inquiries with respect to matters other than safety and health standards should be directed to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210, or to any regional office of the Wage and Hour Division. Safety and health inquiries should be addressed to the Assistant Secretary for Occupational Safety and Health, U.S. Department of Labor, Washington, D.C. 20210, or to any OSHA regional office. A full description of the facts and any relevant documents should be submitted if an official ruling is desired.

#### § 4.102 Administration of the Act.

As provided by section 4 of the Act and under provisions of sections 4 and 5 of the Walsh-Healey Public Contracts Act (49 Stat. 2036, 41 U.S.C. 38, 39) which are made expressly applicable for the purpose, the Secretary of Labor is authorized and directed to administer and enforce the provisions of the McNamara-O'Hara Service Contract Act, to make rules and regulations, issue orders, make decisions, and take other appropriate action under the Act. The Secretary is also authorized to make reasonable limitations and to make rules

and regulations allowing reasonable variations, tolerances, and exemptions to and from provisions of the Act (except section 10), but only in special circumstances where it is determined that such action is necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business and is in accord with the remedial purposes of the Act to protect prevailing labor standards. The authority and enforcement powers of the Secretary under the Act are coextensive with the authority and powers under the Walsh-Healey Act. *Curtiss Wright Corp. v. McLucas* 364 F. Supp. 750, 769 (D.N.J. 1973).

#### § 4.103 The Act.

The McNamara-O'Hara Service Contract Act of 1965 (Pub. L. 89-286, 79 Stat. 1034, 41 U.S.C. 351 et seq.), hereinafter referred to as the Act, was approved by the President on October 22, 1965 (1 Weekly Compilation of Presidential Documents 428). It establishes standards for minimum compensation and safety and health protection of employees performing work for contractors and subcontractors on service contracts entered into with the Federal Government and the District of Columbia. It applies to contracts entered into pursuant to negotiations concluded or invitations for bids issued on or after January 20, 1966. It has been amended by Pub. L. 92-473, 86 Stat. 798; by Pub. L. 93-57, 87 Stat. 140; and by Pub. L. 94-489, 90 Stat. 2358.

#### § 4.104 What the Act provides, generally.

(a) The provisions of the Act apply to contracts, whether negotiated or advertised, the principal purpose of which is to furnish services in the United States through the use of service employees. Under its provisions, every contract subject to the Act (and any bid specification therefor) entered into by the United States or the District of Columbia in excess of \$2,500 must contain stipulations as set forth in § 4.6 of this Part requiring (a) that specified minimum monetary wages and fringe benefits determined by the Secretary of Labor (based on wage rates and fringe benefits prevailing in the locality or, in specified circumstances, the wage rates and fringe benefits contained in a collective bargaining agreement applicable to employees who performed on a predecessor contract) be paid to service employees employed by the contractor or any subcontractor in performing the services contracted for; (b) that working conditions of such employees which are under the control of the contractor or subcontractor meet safety and health standards; and (c) that

notice be given to such employees of the compensation due them under the minimum wage and fringe benefits provisions of the contract. Contractors performing work subject to the Act thus enter into competition to obtain Government business on terms of which they are fairly forewarned by inclusion in the contract. (*Endicott Johnson Corp. v. Perkins*, 317 U.S. 501, 507 (1943).) The Act's purpose is to impose obligations upon those favored with Government business by precluding the use of the purchasing power of the Federal Government in the unfair depression of wages and standards of employment. (See H.R. Rep. No. 948, 89th Cong., 1st Sess. 2-3 (1965); S. Rep. No. 798, 89th Cong., 1st Sess. 3-4 (1965).) The Act does not permit the monetary wage rates specified in such a contract to be less than the minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act, as amended (29 U.S.C. 206(a)(1)). In addition, it is a violation of the Act for any contractor or subcontractor under a Federal contract subject to the Act, regardless of the amount of the contract, to pay any of his employees engaged in performing work on the contract less than such Fair Labor Standards Act minimum wage. Contracts of \$2,500 or less are not, however, required to contain the stipulations described above. These provisions of the Service Contract Act are implemented by the regulations contained in this Part 4 and are discussed in more detail in subsequent sections of Subparts C, D, and E.

#### § 4.105 The Act as amended.

(a) The provisions of the Act (see §§ 4.102-4.103) were amended, effective October 9, 1972, by Public Law 92-473, signed into law by the President on that date. By virtue of amendments made to paragraphs (1) and (2) of section 2(a) and the addition to section 4 of a new subsection (c), the compensation standards of the Act (see §§ 4.159-4.179) were revised to impose on successor contractors certain requirements (see § 4.1b) with respect to payment of wage rates and fringe benefits based on those agreed upon for substantially the same services in the same locality in collective bargaining agreements entered into by their predecessor contractors (unless such agreed compensation is substantially at variance with that locally prevailing or the agreement was not negotiated at arm's length). The Secretary of Labor is to give effect to the provisions of such collective bargaining agreements in his wage determinations under section 2 of the Act. A new paragraph (5) added to



section 2(a) of the Act requires a statement in the government service contract of the rates that would be paid by the contracting agency in the event of its direct employment of those classes of service employees to be employed on the contract work who, if directly employed by the agency, would receive wages determined as provided in 5 U.S.C. 5341. The Secretary of Labor is directed to give due consideration to such rates in determining prevailing monetary wages and fringe benefits under the Act's provisions. Other provisions of the 1972 amendments include the addition of a new section 10 to the Act to insure that wage determinations are issued by the Secretary for substantially all service contracts subject to section 2(a) of the Act at the earliest administratively feasible time; an amendment to section 4(b) of the Act to provide, in addition to the conditions previously specified for issuance of administrative limitations, variations, tolerances, and exemptions (see § 4.123), that administrative action in this regard shall be taken only in special circumstances where the Secretary determines that it is in accord with the remedial purpose of the Act to protect prevailing labor standards; and a new subsection (d) added to section 4 of the Act providing for the award of service contracts for terms not more than 5 years with provision for periodic adjustment of minimum wage rates and fringe benefits payable thereunder by the issuance of wage determinations by the Secretary of Labor during the term of the contract. A further amendment to section 5(a) of the Act requires the names of contractors found to have violated the Act to be submitted for the debarment list (see § 4.188) not later than 90 days after the hearing examiner's finding of violation unless the Secretary recommends relief, and provides that such recommendations shall be made only because of unusual circumstances.

(b) The provisions of the Act were amended by Pub. L. 93-57, 87 Stat. 140, effective July 6, 1973, to extend the Act's coverage to Canton Island.

(c) The provisions of the Act were amended by Pub. L. 94-489, 90 Stat. 2358, approved October 13, 1976, to extend the Act's coverage to white collar workers. Accordingly, the minimum wage protection of the Act now extends to all workers, both blue collar and white collar, other than persons employed in a bona fide executive, administrative, or professional capacity as those terms are used in the Fair Labor Standards Act and in Part 541 of Title 29. Pub. L. 94-489 accomplished this change by adding to

Section 2(a)(5) of the Act a reference to 5 U.S.C. 5332, which deals with white collar workers, and by amending the definition of service contract employee in Section 8(b) of the Act.

(d) Included in this Part 4 and in Part 6 of this subtitle are provisions to give effect to the amendments mentioned in this section.

#### § 4.106 [Reserved]

#### Agencies Whose Contracts May Be Covered

##### § 4.107 Federal contracts.

(a) Section 2(a) of the Act covers contracts (and any bid specification therefor) "entered into by the United States" and section 2(b) applies to contracts entered into "with the Federal Government." Within the meaning of these provisions, contracts entered into by the United States and contracts with the Federal Government include generally all contracts to which any agency or instrumentality of the U.S. Government becomes a party pursuant to authority derived from the Constitution and laws of the United States. The Act does not authorize any distinction in this respect between such agencies and instrumentalities on the basis of their inclusion in or independence from the executive, legislative, or judicial branches of the Government, the fact that they may be corporate in form, or the fact that payment for the contract services is not made from appropriated funds. Thus, contracts of wholly owned Government corporations, such as the Postal Service, and those of nonappropriated fund instrumentalities under the jurisdiction of the Armed Forces, or of other Federal agencies, such as Federal Reserve Banks, are included among those subject to the general coverage of the Act. (*Brinks, Inc. v. Board of Governors of the Federal Reserve System*, 466 F. Supp. 116 (D DC 1979); 43 Atty. Gen. Ops. — (September 26, 1978).) Contracts with the Federal Government and contracts entered into "by the United States" within the meaning of the Act do not, however, include contracts for services entered into on their own behalf by agencies or instrumentalities of other Governments within the United States, such as those of the several States and their political subdivisions, or of Puerto Rico, the Virgin Islands, Guam, or American Samoa.

(b) Where a Federal agency exercises its contracting authority to procure services desired by the Government, the method of procurement utilized by the contracting agency is not controlling in determining coverage of the contract as one entered into by the United States.

Such contracts may be entered into by the United States either through a direct award by a Federal agency or through the exercise by another agency (whether governmental or private) of authority granted to it to procure services for or on behalf of a Federal agency. Thus, sometimes authority to enter into service contracts of the character described in the Act for and on behalf of the Government and on a cost-reimbursable basis may be delegated, for the convenience of the contracting agency, to a prime contractor which has the responsibility for all work to be done in connection with the operation and management of a Federal plant, installation, facility, or program, together with the legal authority to act as agency for and on behalf of the Government and to obligate Government funds in the procurement of all services and supplies necessary to carry out the entire program of operation. The contracts entered into by such a prime contractor with secondary contractors for and on behalf of the Federal agency pursuant to such delegated authority, which have such services as their principal purpose, are deemed to be contracts entered into by the United States and contracts with the Federal Government within the meaning of the Act. However, service contracts entered into by State or local public bodies with purveyors of services are not deemed to be entered into by the United States merely because such services are paid for with funds of the public body which have been received from the Federal Government as a grant under a Federal program. For example, a contract entered into by a municipal housing authority for tree trimming, tree removal, and landscaping for an urban renewal project financed by Federal funds is not a contract entered into by the United States and is not covered by the Service Contract Act. Similarly, contracts let under the Medicaid program which are financed by federally-assisted grants to the States, and contracts which provide for insurance benefits to a third party, under the Medicare program are not subject to the Act.

#### § 4.108 District of Columbia contracts.

Section 2(a) of the Act covers contracts (and any bid specification therefor) in excess of \$2,500 which are "entered into by the . . . District of Columbia." The contracts of all agencies and instrumentalities which procure contract services for or on behalf of the District or under the authority of the District Government are contracts entered into by the District of Columbia



within the meaning of this provision. Such contracts are also considered contracts entered into with the Federal Government or the United States within the meaning of section 2(b), section 5, and the other provisions of the Act. The legislative history indicates no intent to distinguish District of Columbia contracts from the other contracts made subject to the Act, and traditionally, under other statutes, District Government contracts have been made subject to the same labor standards provisions as contracts of other agencies and instrumentalities of the United States.

#### § 4.109 [Reserved]

#### Covered Contracts Generally

##### § 4.110 What contracts are covered.

The Act covers service contracts of the Federal agencies described in §§ 4.107-4.108. Except as otherwise specifically provided (see §§ 4.115 et seq.), all such contracts, the principal purpose of which is to furnish services in the United States through the use of service employees, are subject to its terms. This is true of contracts entered into by such agencies with States or their political subdivisions, as well as such contracts entered into with private employers. Contracts between a Federal or District of Columbia agency and another such agency are not within the purview of the Act; however, "subcontracts" awarded under "prime contracts" between the Small Business Administration and another Federal agency pursuant to various preferential set-aside programs, such as the 8(a) program, are covered by the Act. It makes no difference in the coverage of a contract whether the contract services are procured through negotiation or through advertising for bids. Also, the mere fact that an agreement is not reduced to writing does not mean that the contract is not within the coverage of the Act. The amount of the contract is not determinative of the Act's coverage, although the requirements are different for contracts in excess of \$2,500 and for contracts of a lesser amount. The Act is applicable to the contract if the principal purpose of the contract is to furnish services, if such services are to be furnished in the United States, and if principally service employees will be used in providing such services. These elements of coverage will be discussed separately in the following sections.

##### § 4.111 Contracts "to furnish services."

(a) *"Principal purpose" as criterion.* Under its terms, the Act applies to a "contract . . . the principal purpose of which is to furnish services in the

United States through the use of service employees \* \* \*." If the principal purpose is to provide something other than services of the character contemplated by the Act and any such services which may be performed are only incidental to the performance of a contract for another purpose, the Act does not apply. However, as will be seen by examining the illustrative examples of covered contracts in §§ 4.130 et seq., no hard and fast rule can be laid down as to the precise meaning of the term "principal purpose". This remedial Act is intended to be applied to a wide variety of contracts, and the Act does not define or limit the types of services which may be contracted for under a contract the principal purpose of which is to furnish services. Further, the nomenclature, type, or particular form of contract used by procurement agencies is not determinative of coverage. Whether the principal purpose of a particular contract is the furnishing of services through the use of service employees is largely a question to be determined on the basis of all the facts in each particular case. Even where tangible items of substantial value are important elements of the subject matter of the contract, the facts may show that they are of secondary import to the furnishing of services in the particular case. This principle is illustrated by the examples set forth in § 4.131.

(b) *Determining whether a contract is for "services", generally.* Except indirectly through the definition of "service employee" the Act does not define, or limit, the types of "services" which may be contracted for under a contract "the principal purpose of which is to furnish services". As stated in the congressional committee reports on the legislation, the types of service contracts covered by its provisions are varied. Among the examples cited are contracts for laundry and dry cleaning, for transportation of the mail, for custodial, janitorial, or guard service, for packing and crating, for food service, and for miscellaneous housekeeping services. Covered contracts for services would also include those for other types of services which may be performed through the use of the various classes of service employees included in the definition in section 8(b) of the Act (see § 4.113). Examples of some such contracts are set forth in §§ 4.130 et seq. In determining questions of contract coverage, due regard must be given to the apparent legislative intent to include generally as contracts for "services" those contracts which have as their principal purpose the procurement of

something other than the construction activity described in the Davis-Bacon Act or the materials, supplies, articles, and equipment described in the Walsh-Healey Act. The Committee reports in both the House and Senate, and statements made on the floor of the House, took note of the labor standards protections afforded by these two Acts to employees engaged in the performance of construction and supply contracts and observed: "The service contract is now the only remaining category of Federal contracts to which no labor standards protections apply" (H. Rept. 948, 89th Cong., 1st Sess., p. 1; see also S. Rept. 798, 89th Cong., 1st Sess., p. 1; daily Congressional Record, Sept. 20, 1965, p. 23497). A similar understanding of contracts principally for "services" as embracing contracts other than those for construction or supplies is reflected in the statement of President Johnson upon signing the Act (1 Weekly Compilation of Presidential Documents, p. 428):

##### § 4.112 Contracts to furnish services "in the United States."

(a) The Act covers contract services furnished "in the United States," including any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Outer Continental Shelf lands as defined in the Outer Continental Shelf Lands Act, American Samoa, Guam, Wake Islands, Eniwetok Atoll, Kwajalein Atoll and Johnston Island. The definition expressly excludes any other territory under the jurisdiction of the United States and any United States base or possession within a foreign country. Services to be performed on a vessel operating exclusively in international or foreign waters outside the geographic areas named in section 8(d) would not be services furnished "in the United States" within the meaning of the Act.

(b) A service contract to be performed in its entirety outside the geographic limits of the United States as thus defined is not covered and is not subject to the labor standards of the Act. However, if a service contract is to be performed in part within and in part without these geographic limits, the stipulations required by § 4.6 or § 4.7, as appropriate, must be included in the invitation for bids or negotiation documents and in the contract, and the labor standards must be observed with respect to that part of the contract services that is performed within these geographic limits. In such a case, the requirements of the Act and of the contract clauses will not be applicable



to the services furnished outside the United States.

**§ 4.113 Contracts to furnish services "through the use of service employees".**

(a) *Use of "service employees" in a contract performance.* (1) As indicated in § 4.110, the Act covers service contracts only where the principal purpose of the contract is to furnish services "through the use of service employees." A service contract otherwise subject to the Act ordinarily will meet this condition only if the services under the contract will be furnished principally through the use of service employees. Where it is contemplated that the services (of the kind performed by service employees) will be performed individually by the contractor, and the contracting officer knows when advertising for bids or concluding negotiations that such employees will not be used by the contractor in providing the contract services, the Act will not be deemed applicable to the contract and the contract clauses required by § 4.6 or § 4.7 may be omitted. The fact that the required services will be performed by municipal employees or employees of a State would not remove the contract from the purview of the Act, as this Act does not contain any exemption for contracts performed by such employees. Also, as discussed in paragraph (a)(2) of this section where the services the Government wants under the contract are of a type that will require the use of service employees as defined in section 8(b) of the Act, the contract is not taken out of the purview of the Act by the fact that the manner in which the services of such employees are performed will be subject to the continuing overall supervision of professional personnel to whom the Act does not apply.

(2) The coverage of the Act does not extend, however, to contracts for services to be performed principally by persons who are not service employees, i.e., persons who are bona fide executive, administrative or professional personnel as defined in Part 541 of this title (see paragraph (b) of this section). A contract for medical services furnished principally by professional personnel is an example of such a contract. Contracts for research and development which are performed principally by scientists or other professional personnel would also be examples of contracts which are not subject to the Act. On the other hand, contracts for drafting or computer services are often performed principally by draftsmen, computer operators, or other service employees and are subject to the Act, even though the work of such

employees may be performed under the supervision and direction of professional personnel, and the final analysis may be performed by professionals.

(3) In determining whether a contract will be performed principally through the use of service employees, the determination will ordinarily be made on the basis of total projected employment or staff years on the contract. Thus if it is anticipated that the majority of the employees performing contract services will be service employees, the contract is considered subject to the Act. In close cases or where it is not possible to predict whether service employees will constitute the majority of projected employment or staff years, the Department of Labor should be consulted, since such situations require consideration of other factors such as the nature of the contract work, the type of work performed by service employees, how integral the work performed by the service employees is to the contract and the total number of service employees to be employed on the contract.

(b) *"Service employees" defined.* In determining whether or not any of the contract services will be performed by service employees, the definition of "service employee" in section 8(b) of the Act is controlling. It provides:

The term "service employee" means any person engaged in the performance of a contract entered into by the United States and not exempted under section 7, whether negotiated or advertised, the principal purpose of which is to furnish services in the United States (other than any person employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in part 541 of title 29, Code of Federal Regulations, as of July 30, 1976, and any subsequent revision of those regulations); and shall include all such persons regardless of any contractual relationship that may be alleged to exist between a contractor or subcontractor and such persons.

It will be noted that the definition expressly excludes those employees who are employed in a bona fide executive, administrative, or professional capacity as defined in Part 541 of this title and as discussed further in § 4.156. Some of the specific types of service employees who may be employed on service contracts are noted in other sections which discuss the application of the Act to employees.

**§ 4.114 Subcontracts.**

(a) *"Contractor" as including "subcontractor."* Except where otherwise noted or where the term "Government prime contractor" is used,

the term "contractor" as used in this Part 4 shall be deemed to include a subcontractor. The term "contractor" as used in the contract clauses required by Subpart A in any subcontract under a covered contract shall be deemed to refer to the subcontractor, or, if in a subcontract entered into by such a subcontractor, shall be deemed to refer to the lower level subcontractor. (See § 4.1a(f).)

(b) *Liability of Prime Contractor.* When a contractor undertakes a contract subject to the Act, the contractor agrees to assume the obligation that the Act's labor standards will be observed in furnishing the required services. This obligation may not be relieved by shifting all or part of the work to another, and the prime contractor is jointly and severally liable with any subcontractor for any underpayments on the part of a subcontractor which would constitute a violation of the prime contract. The prime contractor is required to include the prescribed contract clauses (§§ 4.6-4.7) and applicable wage determination in all subcontracts. The appropriate enforcement sanctions provided under the Act may be invoked against both the prime contractor and the subcontractor in the event of failure to comply with any of the Act's requirements where appropriate under the circumstances of the case.

**Specific Exclusions**

**§ 4.115 Exemptions and exceptions generally.**

(a) The Act, in section 7, specifically excludes from its coverage certain contracts and work which might otherwise come within its terms as procurements the principal purpose of which is to furnish services through the use of service employees.

(b) The statutory exemptions in section 7 of the Act are as follows:

(1) Any contract of the United States or District of Columbia for construction, alteration, and/or repair, including painting and decorating of public buildings or public works;

(2) Any work required to be done in accordance with the provisions of the Walsh-Healy Public Contracts Act (49 Stat. 2036);

(3) Any contract for the carriage of freight or personnel by vessel, airplane, bus, truck, express, railway line, or oil or gas pipeline where published tariff rates are in effect;

(4) Any contract for the furnishing of services by radio, telephone, telegraph, or cable companies, subject to the Communications Act of 1934;



(5) Any contract for public utility services, including electric light and power, water, steam, and gas;

(6) Any employment contract providing for direct services to a Federal agency by an individual or individuals;

(7) Any contract with the Post Office Department, (now the U.S. Postal Service) the principal purpose of which is the operation of postal contract stations.

#### § 4.116 Contracts for construction activity.

(a) *General scope of exemption.* The Act, in paragraph (1) of section 7, exempts from its provisions "any contract of the United States or District of Columbia for construction, alteration and/or repair, including painting and decorating of public buildings or public works." This language corresponds to the language used in the Davis-Bacon Act to describe its coverage (40 U.S.C. 276a). The legislative history of the McNamara-O'Hara Service Contract Act indicates that the purpose of the provision is to avoid overlapping coverage of the two acts by excluding from the application of the McNamara-O'Hara Act those contracts to which the Davis-Bacon Act is applicable and in the performance of which the labor standards of that Act are intended to govern the compensation payable to the employees of contractors and subcontractors on the work. (See H. Rept. 798, pp. 2, 5, and H. Rept. 948, pp. 1, 5, also Hearing, Special Subcommittee on Labor, House Committee on Education and Labor, p. 9 (89th Cong., 1st sess.)). The intent of section 7(1) is simply to exclude from the provisions of the Act those construction contracts which involve the employment of persons whose wage rates and fringe benefits are determinable under the Davis-Bacon Act.

(b) *Contracts not within exemption.* Section 7(1) does not exempt contracts which, for purposes of the Davis-Bacon Act, are not considered to be of the character described by the corresponding language in that Act, and to which the provisions of the Davis-Bacon Act are therefore not applied. Such contracts are accordingly subject to the McNamara-O'Hara Act where their principal purpose is to furnish services in the United States through the use of service employees. For example, a contract for clearing timber or brush from land or for the demolition or dismantling of buildings or other structures located thereon may be a contract for construction activity subject to the Davis-Bacon Act where it appears that the clearing of the site is to be followed by the construction of a public

building or public work at the same location. If, however, no further construction activity at the site is contemplated the Davis-Bacon Act is considered inapplicable to such clearing, demolition, or dismantling work. In such event, the exemption in section 7(1) of the McNamara-O'Hara Act has no application and the contract may be subject to the Act in accordance with its general coverage provisions. It should be noted that the fact that a contract may be labeled as one for the sale and removal of property, such as salvage material, does not negate coverage under the Act even though title to the removable property passes to the contractor. While the value of the property being sold in relation to the services performed under the contract is a factor to be considered in determining coverage, where the facts show that the principal purpose of removal, dismantling, and demolition contracts is to furnish services through the use of service employees, these contracts are subject to the Act. (See also § 4.131.)

(c) *Partially exempt contracts.* (1) Instances may arise in which, for the convenience of the Government, instead of awarding separate contracts for construction work subject to the Davis-Bacon Act and for services of a different type to be performed by service employees, the contracting officer may include separate specifications for each type of work in a single contract calling for the performance of both types of work. For example, a contracting agency may invite bids for the installation of a plumbing system or for the installation of a security alarm system in a public building and for the maintenance of the system for one year, under separate bid specifications. In such a case, if the contract is principally for services, the exemption provided by section 7(1) will be deemed applicable only to that portion of the contract which calls for construction activity subject to the Davis-Bacon Act. The contract documents are required to contain the clauses prescribed by § 4.6 for application to the contract obligation to furnish services through the use of service employees, and the provisions of the McNamara-O'Hara Act will apply to that portion of the contract.

(2) *Supply, services, or maintenance contracts involving construction work.* The provisions of both the Davis-Bacon Act and the Service Contract Act would generally apply to contracts involving construction and service work. The exemption provided by section 7(1) of the Act would be applicable to construction contract work in such hybrid contracts where

(i) The contract contains specific requirements for substantial amounts of construction, reconstruction, alteration, or repair work (hereinafter referred to as construction) or it is ascertainable that a substantial amount of construction work will be necessary for the performance of the contract (the word "substantial" relates to the type and quantity of construction work to be performed and not merely to the total value of construction work (whether in absolute dollars or cost percentages) as compared to the total value of the contract); and

(ii) The construction work is physically or functionally separate from, and as a practical matter is capable of being performed on a segregated basis from, the other work called for by the contract.

#### § 4.117 Work subject to requirements of Walsh-Healey Act

(a) The Act, in paragraph (2) of section 7, exempts from its provisions "any work required to be done in accordance with the provision of the Walsh-Healey Public Contracts Act (49 Stat. 2036)." It will be noted that like the similar provision in the Contract Work Hours and Safety Standards Act (40 U.S.C. 329(b)), this is an exemption for "work", i.e., specifications or requirements, rather than for "contracts" subject to the Walsh-Healey Act. The purpose of the exemption was to eliminate possible overlapping of the differing labor standards of the two Acts, which otherwise might be applied to employees performing work on a contract covered by the Service Contract Act if such contract and their work under it should also be deemed to be covered by the Walsh-Healey Act. The Walsh-Healey Act applies to contracts in excess of \$10,000 for the manufacture or furnishing of materials, supplies, articles or equipment. Thus, there is no overlap if the principal purpose of the contract is the manufacture or furnishing of such materials etc., rather than the furnishing of services of the character referred to in the Service Contract Act, for such a contract is not within the general coverage of the latter Act. In such cases the exemption in section 7(2) is not pertinent. See, for example, the discussion in §§ 4.131 and 4.132.

(b) Further, contracts principally for remanufacturing of equipment which is so extensive as to be equivalent to manufacturing are subject to the Walsh-Healey Act. Remanufacturing shall be deemed to be manufacturing when the criteria in paragraph (1) or (2) of this section are met.



(1) Major overhaul of an item, piece of equipment, or material which is degraded or inoperable, and under which all of the following conditions exist:

(i) The item or equipment is required to be completely or substantially torn down into individual components parts; and

(ii) Substantially all of the parts are reworked, rehabilitated, altered and/or replaced; and

(iii) The parts are reassembled so as to furnish a totally rebuilt item or piece of equipment; and

(iv) Manufacturing processes similar to those which were used in the manufacturing of the item or piece of equipment are utilized; and

(v) The disassembled components, if usable (except for situations where the number of items or pieces of equipment involved are too few to make it practicable) are commingled with existing inventory and, as such, lose their identification with respect to a particular piece of equipment; and

(vi) The items or equipment overhauled are restored to original life expectancy, or nearly so; and

(vii) Such work is performed in a facility owned or operated by the contractor.

(2) Major modification of an item, piece of equipment, or material which is wholly or partially obsolete, and under which all of the following conditions exist:

(i) The item or equipment is required to be completely or substantially torn down; and

(ii) Outmoded parts are replaced; and

(iii) The item or equipment is rebuilt or reassembled; and

(iv) The contract work results in the furnishing of a substantially modified item in a usable and serviceable condition; and

(v) The work is performed in a facility owned or operated by the contractor.

(3) Remanufacturing does not include the repair of damaged or broken equipment which does not require a complete teardown, overhaul, and rebuild as described in paragraphs (b)(1) and (2) of this section, or the periodic and routine maintenance, preservation, care, adjustment, upkeep, or servicing of equipment to keep it in usable, serviceable, working order. Such contracts typically are billed on an hourly rate (labor plus materials and parts) basis. Any contract principally for the work described in this subparagraph (b)(3) is subject to the Service Contract Act. Examples of such work include:

(i) Repair of an automobile, truck, or other vehicle, construction equipment, tractor, crane, aerospace, air

conditioning and refrigeration equipment, electric motors, and ground powered industrial or vehicular equipment;

(ii) Repair of typewriters and other office equipment (see § 4.123(e));

(iii) Repair of appliances, radios, television, calculators, and other electronic equipment;

(iv) Inspecting, testing, calibration, painting, packaging, lubrication, tune-up, or replacement of internal parts of equipment listed in (i), (ii), and (iii) above; and

(v) Reupholstering, reconditioning, repair, and refinishing of furniture.

(4) Application of the Service Contract Act or the Walsh-Healey Act to any similar type of contract not discussed above will be decided on a case-by-case basis by the Administrator.

#### § 4.118 Contracts for carriage subject to published tariff rates.

The Act, in paragraph (3) of section 7, exempts from its provisions "any contract for the carriage of freight or personnel by vessel, airplane, bus, truck, express, railway line or oil or gas pipeline where published tariff rates are in effect". In order for this exemption to be applicable, the contract must be for such carriage by a common carrier described by the terms used. It does not, for example, apply to contracts for taxicab or ambulance service, because taxicab and ambulance companies are not among the common carriers specified by the statute. Also, a contract for transportation service does not come within this exemption unless the service contracted for is actually governed by published tariff rates in effect pursuant to State or Federal law for such carriage. The contracts excluded from the reach of the Act by this exemption are typically those where there is on file with the Interstate Commerce Commission or an appropriate State or local regulatory body a tariff rate applicable to the transportation involved, and the transportation contract between the Government and the carrier is evidenced by a bill of lading citing the published tariff rate. An administrative exemption has been provided for certain contracts where such carriage is subject to rates covered by section 10721 of the Interstate Commerce Act. See § 4.123(d). It should be noted further that only such contracts for the carriage of "freight or personnel" are exempt. Further, the exemption cannot apply where the contracts are principally for packing, crating, handling, loading, and/or storage of goods, with local drayage constituting an incidental part of the contract work. Also this exemption thus does not

exclude any contracts for the transportation of mail from the application of the Act, because the term "freight" does not include the mail. (For an administrative exemption of certain contracts with common carriers for carriage of mail, see § 4.123(d)).

#### § 4.119 Contracts for services of communications companies.

The Act, in paragraph (4) of section 7, exempts from its provisions "any contract for the furnishing of services by radio, telephone, telegraph, or cable companies, subject to the Communications Act of 1934." This exemption is applicable to contracts with such companies for communication services regulated under the Communications Act. It does not exempt from the Act any contracts with such companies to furnish any other kinds of services through the use of service employees.

#### § 4.120 Contracts for public utility services.

The Act, in paragraph (5) of section 7, exempts from its provisions "any contract for public utility services, including electric light and power, water, steam, and gas." This exemption is applicable to contracts for such services with companies whose rates therefor are regulated under State, local, or Federal law governing operations of public utility enterprises. Contracts entered into with public utility companies to furnish services through the use of service employees, other than those subject to such rate regulation, are not exempt from the Act. Among the contracts included in the exemption would be those between Federal electric power marketing agencies and investor-owned electric utilities, Rural Electrification Administration cooperatives, municipalities and State agencies engaged in the transmission and sale of electric power and energy.

(See H. Rept. No. 948, 89th Cong., 1st sess., p. 4)

#### § 4.121 Contracts for individual services.

The Act, in paragraph (6) of section 7, exempts from its provisions "any employment contract providing for direct services to a Federal agency by an individual or individuals." This exemption, which applies only to an "employment contract" for "direct services," makes it clear that the Act's application to Federal contracts for services is intended to be limited to service contracts entered into with independent contractors. If a contract to furnish services (to be performed by a service employee as defined in the Act)



provides that they will be furnished directly to the Federal agency by the individual under conditions or circumstances which will make him an employee of the agency in providing the contract service, the exemption applies and the contract will not be subject to the Act's provisions. The exemption does not exclude from the Act any contract for services of the kind performed by service employees which is entered into with an independent contractor whose individual services will be used in performing the contract, but as noted earlier in § 4.113, such a contract would be outside the general coverage of the Act if only the contractor's individual services would be furnished and no service employee would in any event be used in its performance.

#### § 4.122 Contracts for operation of postal contract stations.

The Act, in paragraph (7) of section 7, exempts from its provisions "any contract with the Post Office Department, [now the U.S. Postal Service], the principal purpose of which is the operation of postal contract stations." The exemption is limited to postal service contracts having the operation of such stations as their principal purpose. A provision of the legislation which would also have exempted contracts with the U.S. Postal Service having as their principal purpose the transportation, handling, or delivery of the mails was eliminated from the bill during its consideration by the House Committee on Education and Labor (H. Rept. 948, p. 1, 89th Cong., 1st sess.).

#### § 4.123 Administrative limitations, variances, tolerances, and exemptions.

(a) *Authority of the Secretary.* Section 4(b) of the Act as amended in 1972 authorizes the Secretary to "provide such reasonable limitations" and to "make such rules and regulations allowing reasonable variations, tolerances, and exemptions to and from any or all provisions of this Act (other than § 10), but only in special circumstances where he determines that such limitation, variation, tolerances, or exemption is necessary and proper in the public interest or to avoid the serious impairment of Government business, and is in accord with the remedial purpose of this Act to protect prevailing labor standards." This authority is similar to that vested in the Secretary under section 6 of the Walsh-Healey Public Contracts Act (41 U.S.C. 40) and under section 105 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 331).

(b) *Administrative action under section 4(b) of the Act.* The authority conferred on the Secretary by section 4(b) of the Act will be exercised with due regard to the remedial purpose of the statute to protect prevailing labor standards and to avoid the undercutting of such standards which could result from the award of Government work to contractors who will not observe such standards, and whose saving in labor cost therefrom enables them to offer a lower price to the Government than can be offered by the fair employers who maintain the prevailing standards. Administrative action consistent with this statutory purpose may be taken under section 4(b) with or without a request therefor, when found necessary and proper in accordance with the statutory standards. No formal procedures have been prescribed for requesting such action. However, a request for exemption from the Act's provisions will be granted only upon a strong and affirmative showing that it is necessary and proper in the public interest or to avoid serious impairment of Government business, and is in accord with the remedial purpose of the Act to protect prevailing labor standards. If the request for administrative action under section 4(b) is not made by the headquarters office of the contracting agency to which the contract services are to be provided, the views of such office on the matter should be obtained and submitted with the request or the contracting officer may forward such a request through channels to the agency headquarters for submission with the latter's views to the Administrator of the Wage and Hour Division, Department of Labor, whenever any wage payment issues are involved. Any request relating to an occupational safety or health issue shall be submitted to the Assistant Secretary for Occupational Safety and Health, Department of Labor.

(c) *Documentation of official action under section 4(b).* All papers and documents made a part of the official record of administrative action pursuant to section 4(b) of the Act are available for public inspection in accordance with the regulations in 29 CFR Part 70. Limitations, variations, tolerances and exemptions of general applicability and legal effect promulgated pursuant to such authority are published in the Federal Register and made a part of the rules incorporated in this Part 4. For convenience in use of the rules, they are generally set forth in the sections of this part covering the subject matter to which they relate. (See, for example, the exemption provided in §§ 4.5(b), 4.6(o),

and the limitations set forth in §§ 4.115 et seq.) Any rules that are promulgated under section 4(b) of the Act relating to subject matter not dealt with elsewhere in this Part 4 will be set forth immediately following this paragraph.

(d) In addition to the statutory exemptions in § 7 of the Act (see § 4.115(c)), the following types of contracts have been exempted from all the provisions of the Service Contract Act of 1965, pursuant to section 4(b) of the Act, which exemptions the Secretary of Labor found to be necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business.

(1) Contracts entered into by the United States with common carriers for the carriage of mail by rail, air (except air star routes), bus, and ocean vessel, where such carriage is performed on regularly scheduled runs of the trains, airplanes, buses, and vessels over regularly established routes and accounts for an insubstantial portion of the revenue therefrom.

(2) Any contract entered into by the U.S. Postal Service with an individual owner-operator for mail service where it is not contemplated at the time the contract is made that such owner-operator will hire any service employee to perform the services under the contract except for short periods of vacation time or for unexpected contingencies or emergency situations such as illness, or accident.

(3) Contracts for the carriage of freight or personnel where such carriage is subject to rates covered by section 10721 of the Interstate Commerce Act.

(e) The following types of contracts have been exempted from all the provisions of the Service Contract Act of 1965, pursuant to section 4(b) of the Act, which exemptions the Secretary of Labor found to be necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business and is in accord with the remedial purpose of the Act to protect prevailing labor standards.

(1) Contract requirements for the maintenance and repair of automated data processing equipment, including office information systems, procured pursuant to Public Law 89-306 (40 U.S.C. 759).

(2) Contract requirements for the maintenance and repair of scientific and medical apparatus or equipment which has automated data processing or other high technology as an essential element.

(3) Contract requirements for the maintenance and repair of office/business machines not otherwise exempt pursuant to paragraph (1) above,



where such maintenance and repair is performed by the manufacturer or supplier of the equipment.

(4) Contracts principally for research and development services. As used herein the term "research and development" means any activity which is

(i) Systematic, intensive study directed toward fuller scientific knowledge or understanding of the subject studied,

(ii) Systematic study directed specifically toward applying new knowledge to meet a recognized need, or

(iii) A systematic application of knowledge toward the production of useful materials, devices and systems or methods, including design, development and improvement of prototypes and new processes to meet specific requirements.

The term includes research and development in all fields, including, but not limited to, education and the social sciences, as well as the physical sciences, medical science, and engineering. This exemption does not include contracts for operations and maintenance of government testing or similar research facilities or support services for such facilities.

#### § 4.124—4.129 [Reserved]

#### Particular Application of Contract Coverage Principles

##### § 4.130 Types of covered service contracts illustrated.

(a) The types of contracts, the principal purpose of which is to furnish services through the use of service employees, are too numerous and varied to permit an exhaustive listing. The following list is illustrative, however, of the types of services called for by such contracts that have been found to come within the coverage of the Act. Other examples of covered contracts are discussed in other sections of this subpart.

- (1) Aerial spraying
- (2) Aerial reconnaissance for fire detection
- (3) Ambulance service
- (4) Barber and beauty shop services
- (5) Cafeteria and food service
- (6) Carpet laying (other than part of construction) and cleaning
- (7) Cataloging services
- (8) Chemical testing and analysis
- (9) Clothing alteration and repair
- (10) Computer services
- (11) Concessionaire services
- (12) Custodial, janitorial, and housekeeping services
- (13) Data collection, processing, and/or analysis services
- (14) Drafting and illustrating

- (15) Electronic equipment maintenance and operation and engineering support services
- (16) Exploratory drilling (other than part of construction)
- (17) Film processing
- (18) Fire fighting and protection
- (19) Fueling services
- (20) Furniture repair and rehabilitation
- (21) Geological field surveys and testing
- (22) Grounds maintenance
- (23) Guard and watchman security service
- (24) Inventory services
- (25) Keypunching and keyverifying contracts
- (26) Laboratory analysis services
- (27) Landscaping (other than part of construction)
- (28) Laundry and dry cleaning
- (29) Linen supply services
- (30) Lodging and/or meals
- (31) Mail hauling
- (32) Mailing and addressing services
- (33) Maintenance and repair of all types of equipment, e.g., aircraft, engines, electrical motors, vehicles, and electronic telecommunications, office and related business, and construction equipment [See § 4.123(e).]
- (34) Mess attendant services
- (35) Mortuary services
- (36) Motor pool operation
- (37) Nursing home services
- (38) Operation, maintenance, or logistic support of a Federal facility
- (39) Packing and crating
- (40) Parking services
- (41) Pest control
- (42) Property management
- (43) Snow removal
- (44) Stenographic reporting
- (45) Support services at military installations
- (46) Surveying and mapping services (preliminary but not directly related to construction)
- (47) Taxicab services
- (48) Telephone and field interview services
- (49) Tire and tube repairs
- (50) Transporting property or personnel (except as explained in § 4.118)
- (51) Trash and garbage removal
- (52) Vending machine services
- (53) Visual and graphic arts
- (54) Warehousing or storage

##### § 4.131 Furnishing services involving more than use of labor.

(a) If the principal purpose of a contract is to furnish services in the performance of which service employees will be used, the Act will apply to the contract, in the absence of an exemption, even though the use or furnishing of nonlabor items may be an

important element in the furnishing of the services called for by its terms. The Act is concerned with protecting the labor standards of workers engaged in performing such contracts, and is applicable if the statutory coverage test is met, regardless of the form in which the contract is drafted. The proportion of the labor cost to the total cost of the contract and the necessity of furnishing or receiving tangible nonlabor items in performing the contract obligations will be considered but are not necessarily determinative. A procurement that requires tangible items to be supplied to the Government or the contractor as a part of the service furnished is covered by the Act so long as the facts show that the contract is chiefly for services, and that the furnishing of tangible items is of secondary importance.

(b) Some examples of covered contracts illustrating these principles may be helpful. One such example is a contract for the maintenance and repair of typewriters. Such a contract may require the contractor to furnish typewriter parts, as the need arises, in performing the contract services. Since this does not change the principal purpose of the contract, which is to furnish the maintenance and repair services through the use of service employees, the contract remains subject to the Act.

(c) Another example of the application of the above principle is a contract for the recurrent supply to a Government agency of freshly laundered items on a rental basis. It is plain from the legislative history that such a contract is typical of those intended to be covered by the Act. S. Rept. 798, 89th Cong., 1st Sess., p. 2; H. Rept. 946, 89th Cong., 1st Sess., p. 2. Although tangible items owned by the contractor are provided on a rental basis for the use of the Government, the service furnished by the contractor in making them available for such use when and where they are needed, through the use of service employees who launder and deliver them, is the principal purpose of the contract.

(d) Similarly, a contract in the form of rental of equipment with operators for the plowing and reseeded of a park area is a service contract. The Act applies to it because its principal purpose is the service of plowing and reseeded, which will be performed by service employees, although as a necessary incident the contractor is required to furnish equipment. For like reasons the contracts for aerial spraying and aerial reconnaissance listed in § 4.130 are covered, even though the use of airplanes, an expensive item of



equipment, is essential in performing such services. In general, contracts under which the contractor agrees to provide the Government with vehicles or equipment on a rental basis with drivers or operators for the purpose of furnishing services are covered by the Act. Such contracts are not considered contracts for furnishing equipment within the meaning of the Walsh-Healey Public Contracts Act. On the other hand, contracts under which the contractor provides equipment with operators for the purpose of construction of a public building or public work, such as road resurfacing or dike repair, even where the work is performed under the supervision of Government employees, would be within the exemption in section 7(1) of the Act as contracts for construction subject to the Davis-Bacon Act. (See § 4.116.)

(e) Contracts for data collection, computer services, and the like are within the general coverage of the Act even though the contractor may be required to furnish such tangible items as written reports or computer printouts, since items of this nature are considered to be of secondary importance to the services which it is the principal purpose of the contract to procure.

(f) Contracts under which the contractor receives tangible items from the Government in return for furnishing services (which items are in lieu of or in addition to monetary consideration granted by either party) are covered by the Act where the facts show that the furnishing of such services is the principal purpose of the contracts. For example, property removal or disposal contracts which involve demolition of buildings or other structures are subject to the Act when their principal purpose is dismantling and removal (and no further construction activity at the site is contemplated). However, removal or dismantling contracts whose principal purpose is sales are not covered. So-called "timber sales" contracts generally are not subject to the Act because normally the services provided under such contracts are incidental to the principal purpose of the contracts. (See also §§ 4.111(a) and 4.116(b).)

#### § 4.132 Services and other items to be furnished under a single contract.

If the principal purpose of a contract is to furnish services through the use of service employees within the meaning of the Act, the contract to furnish such services is not removed from the Act's coverage merely because, as a matter of convenience in procurement, it is combined in a single contract document with specifications for the procurement of different or unrelated items. In such

case, the Act would apply to service specifications but would not apply to any specifications subject to the Walsh-Healey Act or to the Davis-Bacon Act. With respect to contracts which contain separate specifications for the furnishing of services and construction activity, see § 4.116(c).

#### § 4.133 [Beneficiary of contract services.]

(a) The Act does not say to whom the services under a covered contract must be furnished. So far as its language is concerned, it is enough if the contract is "entered into" by and with the Government and if its principal purpose is "to furnish services in the United States through the use of service employees". It is clear that Congress intended to cover at least contracts for services of direct benefit to the Government, its property, or its civilian or military personnel for whose needs it is necessary or desirable for the Government to make provision for such services. For example, the legislative history makes specific reference to such contracts as those for furnishing food service and laundry and dry cleaning service for personnel at military installations. Furthermore, there is no limitation in the Act regarding the beneficiary of the services, nor is there any indication that only contracts for services of direct benefit to the Government, as distinguished from the general public, are subject to the Act. Therefore, where the principal purpose of the Government contract is to provide services through the use of service employees, the contract is covered by the Act, regardless of the direct beneficiary of the services or the source of the funds from which the contractor is paid for the service, and irrespective of whether the contractor performs the work in its own establishment, on a Government installation, or elsewhere. The fact that the contract requires or permits the contractor to provide the services directly to individual personnel as a concessionaire, rather than through the contracting agency, does not negate coverage by the Act.

(b) Because of comments made shortly after the Act's passage by some Members of Congress that the Act's requirements should not be imposed on certain concession contracts providing services to the general public, the Department of Labor, pursuant to Section 4(b) of the Act, exempts from the provisions of the Act certain kinds of concession contracts as provided herein. Specifically, concession contracts (such as those entered into by the National Park Service) for the furnishing of food, lodging, automobile fuel, visitor information services, souvenirs,

newspaper stands, and recreational equipment to the general public, as distinguished from the United States Government or its personnel, are exempt. Where concession contracts, however, include substantial requirements for services other than those stated, those services are not exempt. Exemption of additional recreational or similar services under concession contracts principally for services for visitors at Federal facilities will be determined in the discretion of the Secretary on a case-by-case basis in accordance with 29 CFR 4.123 and section 4(b) of the Act. The exemption provided does not affect a concession contractor's obligation to comply with the labor standards provisions of any other statutes such as the Contract Work Hours and Safety Standards Act, the Davis-Bacon Act (40 U.S.C. 276 *et seq.*; see Part 5 of this title) and the Fair Labor Standards Act (29 U.S.C. 201 *et seq.*). This clarification and limitation of the exemption previously granted (33 FR 9880, July 10, 1968) is necessary and proper in the public interest and is in accord with the remedial purpose of the Act.

#### § 4.134 Contracts outside the Act's coverage.

(a) Contracts entered into by agencies other than those of the Federal Government or the District of Columbia as described in §§ 4.107-4.108 are not within the purview of the Act. Thus, the Act does not cover service contracts entered into with any agencies of Puerto Rico, the Virgin Islands, American Samoa, or Guam acting in behalf of their respective local governments. Similarly, it does not cover service contracts entered into by agencies of States or local public bodies, not acting as agents for or on behalf of the United States or the District of Columbia, even though Federal financial assistance may be provided for such contracts under Federal law or the terms and conditions specified in Federal law may govern the award and operation of the contract.

(b) Further, as already noted in §§ 4.111-4.113, the Act does not apply to Government contracts which do not have as their principal purpose the furnishing of services, or which call for no services to be furnished within the United States or through the use of service employees as those terms are defined in the Act. Clearly outside the Act's coverage for these reasons are such contracts as those for the purchase of tangible products which the Government needs (e.g. vehicles, office equipment, and supplies), for the logistic support of an air base in a foreign



country, or for the services of a lawyer to examine the title to land. Similarly, where the Government contracts for a lease of building space for Government occupancy and the building owner furnishes general janitorial and other building services on an incidental basis through the use of service employees, the leasing of the space rather than the furnishing of the building services is the principal purpose of the contract, and the Act does not apply. Another type of contract which is outside the coverage of the Act because it is not for the principal purpose of furnishing services may be illustrated by a contract for the rental of parking space under which the Government agency is simply given a lease or license to use the contractor's real property. Such a contract is to be distinguished from contracts for the storage of vehicles which are delivered into the possession or custody of the contractor, who will provide the required services including the parking or retrieval of the vehicles.

(c) There are a number of types of contracts which, while outside the Act's coverage in the usual case, may be subject to its provisions under the conditions and circumstances of a particular procurement, because these may be such as to require a different view of the principal purpose of the contract. Thus, the ordinary contract for the recapping of tires would have as its principal purpose the manufacture and furnishing of rebuilt tires for the Government rather than the furnishing of services through the use of service employees, and thus would be outside the Act's coverage. Similarly, contracts calling for printing, reproduction, and duplicating ordinarily would appear to have as their principal purpose the furnishing in quantity of printed, reproduced or duplicated written materials rather than the furnishing of reproduction services through the use of service employees. However, in a particular case, the terms, conditions, and circumstances of the procurement may be such that the facts would show its purpose to be chiefly the furnishing of services (e.g. repair services, typesetting, photocopying, editing, etc.), and where such services require the use of service employees the contract would be subject to the Act unless excluded therefrom for some other reason.

#### §§ 4.135-4.139 [Reserved]

#### Determining Amount of Contract

##### § 4.140 Significance of contract amount.

As set forth in § 4.104 and in the requirements of §§ 4.6-4.7, the obligations of a contractor with respect to labor standards differ in the case of a

covered and nonexempt contract, depending on whether the contract is or is not in excess of \$2,500. Rules for resolving questions that may arise as to whether a contract is or is not in excess of this figure are set forth in the following sections.

##### § 4.141 General criteria for measuring amount.

(a) In general, the contract amount is measured by the consideration agreed to be paid, whether in money or other valuable consideration, in return for the obligations assumed under the contract. Thus, even though a contractor, such as a wrecker entering into a contract with the Government to raze a building on a site which will remain vacant, may not be entitled to receive any money from the Government for such work under his contract or may even agree to pay the Government in return for the right to dispose of the salvaged materials, the contract will be deemed one in excess of \$2,500 if the value of the property obtained by the contractor, less anything he might pay the Government, is in excess of such amount. In addition, concession contracts are considered to be contracts in excess of \$2,500 if the contractor's gross receipts under the contract may exceed \$2,500.

(b) All bids from the same person on the same invitation for bids will constitute a single offer, and the total award to such person will determine the amount involved for purposes of the Act. Where the procurement is made without formal advertising, in arriving at the aggregate amount involved, there must be included all property and services which would properly be grouped together in a single transaction and which would be included in a single advertisement for bids if the procurement were being effected by formal advertising. Therefore, if an agency procures continuing services through the issuance of monthly purchase orders, the amount of the contract for purposes of application of the Act is not measured by the amount of an individual purchase order. In such cases, if the continuing services were procured through formal advertising, the contract term would typically be for one year, and the monthly purchase orders must be grouped together to determine whether the yearly amount may exceed \$2,500. However, a purchase order for services which are not continuing but are performed on a one-time or sporadic basis and which are not performed under a requirements contract, need not be equated to a yearly amount. (See § 4.142(b)). In addition, where an invitation is for services in an amount in excess of \$2,500 and bidders are

permitted to bid on a portion of the services not amounting to more than \$2,500, the amounts of the contracts awarded separately to individual and unrelated bidders will be measured by the portions of the services covered by their respective contracts.

(c) Where a contract is issued in an amount in excess of \$2,500 this amount will govern for purposes of application of the Act even though penalty deductions, deductions for prompt payment, and similar deductions may reduce the amount actually expended by the Government to \$2,500 or less.

##### § 4.142 Contracts in an indefinite amount.

(a) Every contract subject to this Act which is indefinite in amount is required to contain the clauses prescribed in § 4.6 for contracts in excess of \$2,500, unless the contracting officer has definite knowledge in advance that the contract will not exceed \$2,500 in any event.

(b) Where contracts or agreements between a Government agency and prospective purveyors of services are negotiated which provide terms and conditions under which services will be furnished through the use of service employees in response to individual purchase orders or calls, if any, which may be issued by the agency during the life of the agreement, these agreements would ordinarily constitute contracts within the intent of the Act under principles judicially established in *United Biscuit Co. v. Wirtz*, 17 WH Cases 146 (C.A.D.C.), a case arising under the Walsh-Healey Public Contracts Act. Such a contract, which may be in the nature of a bilateral option contract and not obligate the Government to order any services or the contractor to furnish any, nevertheless governs any procurement of services that may be made through purchase orders or calls issued under its terms. Since the amount of the contract is indefinite, it is subject to the rule stated in paragraph (a) of this section. The amount of the contract is not determined by the amount of any individual call or purchase order.

#### Changes in Contract Coverage

##### § 4.143 Effects of changes or extensions of contracts, generally.

(a) Sometimes an existing service contract is modified, amended, or extended in such a manner that the changed contract is considered to be a new contract for purposes of the application of the Act's provisions. The general rule with respect to such contracts is that, whenever changes affecting the labor requirements are made in the terms of the contract, the



provisions of the Act and the regulations thereunder will apply to the changed contract in the same manner and to the same extent as they would to a wholly new contract. However, contract modifications or amendments (other than contract extensions) that are unrelated to the labor requirements of a contract will not be deemed to create a new contract for purposes of the Act. In addition, only significant changes related to labor requirements will be considered as creating new contracts. This limitation on the application of the Act has been found to be in accordance with the provisions of section 4(b) of the Act.

(b) Also, whenever the term of an existing contract is extended, pursuant to an option clause or otherwise, so that the contractor furnishes services over an extended period of time, rather than being granted extra time to fulfill his original commitment, the contract extension is considered to be a new contract for purposes of the application of the Act's provisions. All such "new" contracts as discussed above require the insertion of a new or revised wage determination in the contract as provided in § 4.5.

#### § 4.144 Contract modifications affecting amount.

Where a contract which was originally issued in an amount not in excess of \$2,500 is later modified so that its amount may exceed that figure, all the provisions of section 2(a) of the Act, and the regulations thereunder are applicable from the date of modification to the date of contract completion. In the event of such modification, the contracting officer will immediately request a wage determination from the Department of Labor and insert the required contract clauses and any wage determination issued into the contract. In the event that a contract for services subject to the Act in excess of \$2,500 is modified so that it cannot exceed \$2,500, compliance with the provisions of section 2(a) of the Act and the contract clauses required thereunder ceases to be an obligation of the contractor when such modification becomes effective.

#### § 4.145 Extended term contracts.

(a) Sometimes service contracts are entered into for a term of years; however, their continuation in effect is subject to the appropriation by Congress of funds for each new fiscal year. In such event, for purposes of this Act, a contract shall be deemed entered into at the beginning of each new fiscal year during which the terms of the original contract are made effective by an appropriation for the purpose. In other

cases a service contract, entered into for a specified term by a Government agency, may contain a provision such as an option clause under which the agency may unilaterally extend the contract for a period of the same length or other stipulated period. Since the exercise of the option results in the rendition of services for a new or different period not included in the term for which the contractor is obligated to furnish services or for which the Government is obligated to pay under the original contract in the absence of such action to extend it, the contract for the additional period is a wholly new contract with respect to application of the Act's provisions and the regulations thereunder.

(b) With respect to multi-year service contracts which are not subject to annual appropriations (for example, concession contracts which are funded through the concessionaire's sales, certain operations and maintenance contracts which are funded with so-called "no year money" or contracts awarded by instrumentalities of the United States, such as the Federal Reserve Banks, which do not receive appropriated funds), section 4(d) of the Act allows such contracts to be awarded for a period of up to five years on the condition that the multi-year contracts will be amended no less often than once every two years to incorporate any new Service Contract Act wage determination which may be applicable. Accordingly, unless the contracting agency is notified to the contrary (see § 4.4(d)), at the end of the second year and again at the end of the fourth year, etc. such contracts are treated as wholly new contracts for purposes of the application of the Act's provisions and regulations thereunder. The two-year period is considered to begin on the date that the contractor commences performance on the contract (i.e., anniversary date) rather than on the date of contract award.

#### Period of Coverage

#### § 4.146 Contract obligations after award, generally.

A contractor's obligation to observe the provisions of the Act arises on the date the contractor is informed that award of the contract has been made, and not necessarily on the date of formal execution. However, the contractor is required to comply with the provisions of the Act and regulations thereunder only while the employees are performing on the contract, provided the contractor's records make clear the period of such performance. (See also § 4.179.) If employees of the contractor

are required by the contract to complete certain preliminary training or testing prior to the commencement of the contract services, or if there is a phase-in period which allows the new contractor's employees to familiarize themselves with the contract work so as to provide a smooth transition between contractors, the time spent by employees undertaking such training or phase-in work is considered to be hours worked on the contract and must be compensated for even though the principal contract services may not commence until a later date.

#### §§ 4.147-4.149 [Reserved]

#### Employees Covered by the Act

#### § 4.150 Employee coverage generally.

The Act, in section 2(b), makes it clear that its provisions apply generally to all employees engaged in performing work on a covered contract entered into by the contractor with the Federal Government, regardless of whether they are the contractor's employees or those of any subcontractor under such contract. All service employees who, on or after the date of award, are engaged in working on or in connection with the contract, either in performing the specific services called for by its terms or in performing other duties necessary to the performance of the contract, are thus subject to the Act unless a specific exemption (see §§ 4.115 et seq.) is applicable. All such employees must be paid wages at a rate not less than the minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act (29 U.S.C. 206(a)(1)), as amended. Payment of a higher minimum monetary wage and the furnishing of fringe benefits may be required under the contract, pursuant to the provisions of sections 2(a)(1), (2), and 4(c) of the Act.

#### § 4.151 Employees covered by provision of section 2(a).

The provisions of sections 2(a) and 4(c) of the Act prescribe labor standards requirements applicable, except as otherwise specifically provided, to every contract in excess of \$2,500 which is entered into by the United States or the District of Columbia for the principal purpose of furnishing services in the United States through the use of service employees. These provisions apply to all service employees engaged in the performance of such a contract or any subcontract thereunder. The Act, in section 8(b) defines the term "service employee". The general scope of the definition is considered in § 4.113(b) of this subpart.



**§ 4.152 Employees subject to prevailing compensation provisions of sections 2(a)(1) and (2) and 4(c).**

(a) Under section 2(a)(1) and (2) of the Act, minimum monetary wages and fringe benefits to be paid or furnished the various classes of service employees performing such contract work are determined by the Secretary of Labor or his authorized representative in accordance with prevailing rates and fringe benefits for such employees in the locality or in accordance with the rates contained in a predecessor contractor's collective bargaining agreement, as appropriate, and are required to be specified in such contracts and subcontracts thereunder. All service employees of the classes who actually perform the specific services called for by the contract (e.g., janitors performing on a contract for office cleaning; stenographers performing on a contract for stenographic reporting) are covered by the provisions specifying such minimum monetary wages and fringe benefits for such classes of service employees and must be paid not less than the applicable rate established for the classification(s) of work performed.

(b) The duties which an employee actually performs govern the classification and the rate of pay to which the employee is entitled under the applicable wage determination. Some job classifications listed in an applicable wage determination are descriptive by title and have commonly understood meanings, (e.g., janitors, security guards, pilots, etc.). In such situations, detailed position descriptions may not be included in the wage determination. However, in cases where additional descriptive information is needed to inform users of the scope of duties included in the classification, the wage determination will generally contain detailed position descriptions based on the data source relied upon for the issuance of the wage determination.

(c) (1) Some wage determinations will list a series of classes within a job classification family, e.g., Computer Operators, Class A, B, and C, or Electronic Technicians, Class A, B, and C, or Clerk Typist, Class A and B. Generally, the lowest level listed for a job classification family is considered to be the entry level and establishment of a lower level through conformance (§ 4.6(b)(2)) is not permissible. Trainee classifications may be used if listed on the wage determination, but cannot be conformed under § 4.6(b)(2). Helpers in skilled maintenance trades (e.g., electricians, machinists, automobile mechanics, etc.) whose duties constitute, in fact, separate and distinct jobs, may also be used if listed on the wage

determination, but cannot be conformed. Conformance may not be used to artificially split or subdivide classifications listed in the wage determination. However, conforming procedures may be used if the work which an employee performs under the contract is not within the scope of any classification listed on the wage determination, regardless of job title. (2) Subminimum rates for apprentices, student learners, and handicapped workers are permissible under the conditions discussed in § 4.6(o).

**§ 4.153 Inapplicability of prevailing compensation provisions to some employees.**

There may be employees used by a contractor or subcontractor in performing a service contract in excess of \$2,500 which is subject to the Act, whose services, although necessary to the performance of the contract, are not subject to minimum monetary wage or fringe benefit provisions contained in the contract pursuant to section 2(a) because such employees are not directly engaged in performing the specified contract services. An example might be a laundry contractor's billing clerk performing billing work with respect to the items laundered. In all such situations, the employees who are necessary to the performance of the contract but not directly engaged in the performance of the specified contract services, are nevertheless subject to the minimum wage provision of section 2(b) (see § 4.150) requiring payment of not less than the minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act to all employees working on a covered contract, unless specifically exempt. However, in situations where minimum monetary wages and fringe benefits for a particular class or classes of service employees actually performing the services called for by the contract have not been specified in the contract because the wage and fringe benefit determination applicable to the contract has been made only for other classes of service employees who will perform the contract work, the employer will be required to pay the monetary wages and fringe benefits which may be specified for such classes of employees pursuant to the conformance procedures provided in § 4.6(b).

**§ 4.154 Employees covered by sections 2(a)(3) and (4).**

The safety and health standards of section 2(a)(3) and the notice requirements of section 2(a)(4) of the Act (see § 4.183) are applicable, in the absence of a specific exemption, to

every service employee engaged by a contractor or subcontractor to furnish services under a contract subject to section 2(a) of the Act.

**§ 4.155 Employee coverage does not depend on form of employment contract.**

The Act, in section 8(b), makes it plain that the coverage of service employees depends on whether their work for the contractor or subcontractor on a covered contract is that of a service employee as defined in section 8(b) and not on any contractual relationship that may be alleged to exist between the contractor or subcontractor and such persons. In other words, any person, except those discussed in § 4.156 below, who performs work called for by a contract or that portion of a contract subject to the Act is, per se, a service employee. Thus, for example, a person's alleged status as an "owner-operator" or an "independent contractor" is immaterial in determining coverage under the Act and all such persons performing the work of service employees must be compensated in accordance with the Act's requirements.

**§ 4.156 Employees in bona fide executive, administrative, or professional capacity.**

The term "service employee" as defined in Section 8(b) of the Act does not include persons employed in a bona fide executive, administrative, or professional capacity as those terms are defined in 29 CFR Part 541. Employees within the definition of service employee who are employed in an executive, administrative, or professional capacity are not excluded from coverage, however, even though they are highly paid, if they fail to meet the tests set forth in 29 CFR Part 541. Thus, such employees as laboratory technicians, draftsmen, and air ambulance pilots, though they require a high level of skill to perform their duties and may meet the salary requirements of the regulations in Part 541 of this title, are ordinarily covered by the Act's provisions because they do not typically meet the other requirements of those regulations.

**Subpart D—Compensation Standards**

**§ 4.159 General minimum wage.**

The Act, in section 2(b)(1), provides generally that no contractor or subcontractor under any Federal contract subject to the Act shall pay any employee engaged in performing work on such a contract less than the minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act. Section 2(a)(1) provides that the minimum monetary wage specified in



any such contract exceeding \$2,500 shall in no case be lower than this Fair Labor Standards Act minimum wage. Section 2(b)(1) is a statutory provision which applies to the contractor or subcontractor without regard to whether it is incorporated in the contract; however, §§ 4.6-4.7 provide for inclusion of its requirements in covered contracts and subcontracts. Because this statutory requirement specifies no fixed monetary wage rate and refers only to the minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act, and because its application does not depend on provisions of the contract, any increase in such Fair Labor Standards Act minimum wage during the life of the contract is, on its effective date, also effective to increase the minimum wage payable under section 2(b)(1) to employees engaged in performing work on the contract. The minimum wage rate under section 6(a)(1) of the Fair Labor Standards Act is \$3.10 per hour beginning January 1, 1980, and \$3.35 per hour after December 31, 1980.

**§ 4.160 Effect of section 6(e) of the Fair Labor Standards Act.**

Contractors and subcontractors performing work on contracts subject to the Service Contract Act are required to pay all employees, including those employees who are not performing work on or in connection with such contracts, not less than the general minimum wage standard provided in section 6(a)(1) of the Fair Labor Standards Act, as amended (Pub. L. 95-151).

**§ 4.161 Minimum monetary wages under contracts exceeding \$2,500.**

The standards established pursuant to the Act for minimum monetary wages to be paid by contractors and subcontractors under service contracts in excess of \$2,500 to service employees engaged in performance of the contract or subcontract are required to be specified in the contract and in all subcontracts (see § 4.6). Pursuant to the statutory scheme provided by sections 2(a)(1) and 4(c) of the Act, every covered contract (and any bid specification therefor) which is in excess of \$2,500 shall contain a provision specifying the minimum monetary wages to be paid the various classes of service employees engaged in the performance of the contract or any subcontract thereunder, as determined by the Secretary or his authorized representative in accordance with prevailing rates for such employees in the locality, or, where a collective bargaining agreement applied to the employees of a predecessor contractor in the same locality, in accordance with

the rates for such employees provided for in such agreement; including prospective wage increases as provided in such agreement as a result of arm's-length negotiations. In no case may such wages be lower than the minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended. (For a detailed discussion of the application of section 4(c) of the Act, see § 4.163.) If some or all of the determined wages in a contract fall below the level of the Fair Labor Standards Act minimum by reason of a change in that rate by amendment of the law, these rates become obsolete and the employer is obligated under section 2(b)(1) of the Service Contract Act, to pay the minimum wage rate established by the amendment as of the date it becomes effective. A change in the Fair Labor Standards Act minimum by operation of law would also have the same effect on advertised specifications or negotiations for covered service contracts, i.e., it would make ineffective and would supplant any lower rate or rates included in such specifications or negotiations whether or not determined. However, unless affected by such a change in the Fair Labor Standards Act minimum wage, by contract changes necessitating the insertion of new wage provisions (see §§ 4.143-4.145 or by the requirements of section 4(c) of the Act (see § 4.163), the minimum monetary wage rate specified in the contract for each of the classes of service employees for which wage determinations have been made under section 2(a)(1) will continue to apply throughout the period of contract performance. No change in the obligation of the contractor or subcontractor with respect to minimum monetary wages will result from the mere fact that higher or lower wage rates may be determined to be prevailing for such employees in the locality after the award and before completion of the contract. Such wage determinations are effective for contracts not yet awarded, as provided in § 4.5(a).

**§ 4.162 Fringe benefits under contracts exceeding \$2,500.**

(a) Pursuant to the statutory scheme provided by sections 2(a)(2) and 4(c) of the Act, every covered contract in excess of \$2,500 shall contain a provision specifying the fringe benefits to be furnished the various classes of service employees, engaged in the performance of the contract or any subcontract thereunder, as determined by the Secretary or his authorized representative to be prevailing for such employees in the locality or, where a collective bargaining agreement applied

to the employees of a predecessor contractor in the same locality, the various classes of service employees engaged in the performance of the contract or any subcontract must be provided the fringe benefits, including prospective or accrued fringe benefit increases, provided for in such agreement as a result of arm's-length negotiations. (For a detailed discussion of section 4(c) of the Act, see § 4.163.) As provided by section 2(a)(2) of the Act, fringe benefits include medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, unemployment benefits, life insurance, disability and sickness insurance, accident insurance, vacation and holiday pay, costs of apprenticeship or other similar programs and other bona fide fringe benefits not otherwise required by Federal, State, or local law to be provided by the contractor or subcontractor.

(b) Under this provision, the fringe benefits, if any, which the contractor or subcontractor is required to furnish the service employees engaged in the performance of the contract are specified in the contract documents (see § 4.6). How the contractor may satisfy this obligation is dealt with in §§ 4.170-4.177 of this part. A change in the fringe benefits required by the contract provision will not result from the mere fact that other or additional fringe benefits are determined to be prevailing for such employees in the locality at a time subsequent to the award but before completion of the contract. Such fringe benefit determinations are effective for contracts not yet awarded (see § 4.5(a)), or in the event that changes in an existing contract requiring their insertion for prospective application have occurred (see §§ 4.143-4.145). However, none of the provisions of this subsection may be construed as altering a successor contractor's obligations under section 4(c) of the Act. (See § 4.163.)

**§ 4.163 Section 4(c) of the Act.**

(a) Section 4(c) of the Act provides that no "contractor or subcontractor under a contract, which succeeds a contract subject to this Act and under which substantially the same services are furnished, shall pay any service employee under such contract less than the wages and fringe benefits, including accrued wages and fringe benefits, and any prospective increases in wages and fringe benefits provided for in a collective-bargaining agreement as a result of arm's-length negotiations, to



which such service employees would have been entitled if they were employed under the predecessor contract: Provided, That in any of the foregoing circumstances such obligations shall not apply if the Secretary finds after a hearing in accordance with regulations adopted by the Secretary that such wages and fringe benefits are substantially at variance with those which prevail for services of a character similar in the locality." Under this provision, the successor contractor's sole obligation is to insure that all service employees are paid no less than the wages and fringe benefits to which such employees would have been entitled if employed under the predecessor's collective bargaining agreement (i.e., irrespective of whether the successor's employees were or were not employed by the predecessor contractor). The obligation of the successor contractor is limited to the wage and fringe benefit requirements of the predecessor's collective bargaining agreement and does not extend to other items such as seniority, grievance procedures, work rules, overtime, etc.

(b) *Section 4(c) is self-executing.* Under section 4(c), a successor contractor in the same locality as the predecessor contractor is statutorily obligated to pay no less than the wage rates and fringe benefits which the predecessor contractor paid pursuant to a collective bargaining agreement. This is a direct statutory obligation and requirement placed on the successor contractor by section 4(c) and is not contingent or dependent upon the issuance or incorporation in the contract of a wage determination based on the predecessor contractor's collective bargaining agreement. Pursuant to section 4(b) of the Act, a variation has been granted which limits the self-executing application of section 4(c) in the circumstances and under the conditions described in § 4.1b(b) of this part. It must be emphasized, however, that the variation in § 4.1b(b) is applicable only if the contracting officer has given both the incumbent (predecessor) contractor and the employees' collective bargaining representative notification at least 30 days in advance of any estimated procurement date.

(c) *Variance hearings.* The regulations and procedures for hearings pursuant to section 4(c) of the Act are contained in § 4.10 of Subpart A and Part 6 of this title. If, as the result of such hearing, some or all of the wage rate and/or fringe benefit provisions of a predecessor contractor's collective bargaining agreement are found to be

substantially at variance with the wage rates and/or fringe benefits prevailing in the locality, the Administrator will cause a new wage determination to be issued in accordance with the decision of the Administrative Law Judge or the Board of Service Contract Appeals, as appropriate. Since "it was the clear intent of Congress that any revised wage determinations resulting from a section 4(c) proceeding were to have validity with respect to the procurement involved" (53 Comp. Gen. 401, 402, 1973), the solicitation, or the contract if already awarded, must be amended to incorporate the newly issued wage determination. Such new wage determination shall be made applicable to the contract as of the date of the Administrative Law Judge's decision or, where the decision is appealed, as of the date of the decision of the Board of Service Contract Appeals. The legislative history of the 1972 Amendments makes clear that the collectively bargained "wages and fringe benefits shall continue to be honored \* \* \* unless and until the Secretary finds, after a hearing, that such wages and fringe benefits are substantially at variance with those prevailing in the locality for like services" (S. Rept. 92-1131, 92nd Cong., 2d Sess. 5). Thus, variance decisions do not have application retroactive to the commencement of the contract.

(d) *Sections 2(a) and 4(c) must be read in conjunction.* The Senate report accompanying the bill which amended the Act in 1972 states that "Sections 2(a)(1), 2(a)(2), and 4(c) must be read in harmony to reflect the statutory scheme." (S. Rept. 92-1131, 92nd Cong., 2d Sess. 4.) Therefore, since section 4(c) refers only to the predecessor contractor's collective bargaining agreement, the reference to collective bargaining agreements in sections 2(a)(1) and 2(a)(2) can only be read to mean a predecessor contractor's collective bargaining agreement. The fact that a successor contractor may have its own collective bargaining agreement does not negate the clear mandate of the statute that the wages and fringe benefits called for by the predecessor contractor's collective bargaining agreement shall be the minimum payable under a new (successor) contract. 48 Comp. Gen. 22, 23-24 (1968). In addition, because section 2(a) only applies to covered contracts in excess of \$2,500, the requirements of section 4(c) likewise apply only to successor contracts which may be in excess of \$2,500. However, if the successor contract is in excess of \$2,500, section 4(c) applies regardless of

the amount of the predecessor contract. (See §§ 4.141-4.142 for determining contract amount.)

(e) *The operative words of section 4(c) refer to "contract" not "contractor."* Section 4(c) begins with the language, "[n]o contractor or subcontractor under a contract, which succeeds a contract subject to this Act" (emphasis supplied). Thus, the statute is applicable by its terms to a successor contract without regard to whether the successor contractor was also the predecessor contractor. A contractor may become its own successor because it was the successful bidder on a recompetition of an existing contract, or because the contracting agency exercises an option or otherwise extends the term of the existing contract, etc. (See §§ 4.143-4.145). Further, since sections 2(a) and 4(c) must be read in harmony to reflect the statutory scheme, it is clear that the provisions of section 4(c) apply whenever the Act or the regulations require that a new wage determination be incorporated into the contract (53 Comp. Gen. 401, 404-6 (1973)).

(f) *Collective bargaining agreement must be applicable to work performed on the predecessor contract.* Section 4(c) will be operative only if the employees who worked on the predecessor contract were actually paid in accordance with the wage and fringe benefit provisions of a predecessor contractor's collective bargaining agreement. Thus, for example, section 4(c) would not apply if the predecessor contractor entered into a collective bargaining agreement for the first time, which did not become effective until after the expiration of the predecessor contract. Likewise, the requirements of section 4(c) would not apply if the predecessor contractor's collective bargaining agreement applied only to other employees of the firm and not to the employees working on the contract.

(g) *Contract reconfigurations.* As a result of changing priorities, mission requirements, or other considerations, contracting agencies may decide to restructure their support contracts. Thus, specific contract requirements from one contract may be broken out and placed in a new contract or combined with requirements from other contracts into a consolidated contract. The protections afforded service employees under section 4(c) are not lost or negated because of such contract reconfigurations, and the predecessor contractor's collectively bargained rates follow identifiable contract work requirements into new or consolidated contracts, provided that the new or consolidated contract is primarily for



services which were furnished in the same locality under a predecessor contract. Where there is more than one predecessor contract to the new or consolidated contract, the predecessor contract which was for the greatest portion of the services under the new or consolidated contract shall be deemed to be the predecessor contract for purposes of section 4(c), and the collectively bargained wages and fringe benefits under that contract, if any, shall be applicable.

(h) *Interruption of contract services.* Other than the requirement that substantially the same services be furnished, the requirement for arm's-length negotiations and the provision for variance hearings, the Act does not impose any other restrictions on the application of section 4(c). Thus, the application of section 4(c) is not negated because the contracting authority may change and the successor contract is awarded by a different contracting agency. Also, there is no requirement that the successor contract commence immediately after the completion or termination of the predecessor contract, and an interruption of contract services does not negate the application of section 4(c). Contract services may be interrupted because the Government facility is temporarily closed for renovation, or because a predecessor defaulted on the contract or because a bid protest has halted a contract award requiring the Government to perform the services with its own employees. In all such cases, the requirements of section 4(c) would apply to any successor contract which may be awarded after the temporary interruption or hiatus. The basic principle in all of the preceding examples is that successorship provisions of section 4(c) apply to the full term successor contract. Therefore, temporary interim contracts, which allow a contracting agency sufficient time to solicit bids for a full term contract, also do not negate the application of section 4(c) to a full term successor contract.

(i) *Place of performance.* The successorship requirements of section 4(c) apply to all contracts for substantially the same services as were furnished under a predecessor contract in the same locality.

(j) *Interpretation of wage and fringe benefit provisions of wage determinations issued pursuant to sections 2(a) and 4(c).* Wage determinations which are issued for successor contracts subject to section 4(c) are intended to accurately reflect the rates and fringe benefits set forth in the predecessor's collective bargaining

agreement. However, failure to include in the wage determination any job classification, wage rate, or fringe benefit encompassed in the collective bargaining agreement does not relieve the successor contractor of the statutory requirement to comply at a minimum with the terms of the collective bargaining agreement insofar as wages and fringe benefits are concerned. Since the successor's obligations are governed by the terms of the collective bargaining agreement, any interpretation of the wage and fringe benefit provisions of the wage determination must be based on the intent of the parties to the collective bargaining agreement to the extent that such interpretation is not violative of law. Therefore, some of the principles discussed in §§ 4.170-4.177 regarding specific interpretations of the fringe benefit provisions of prevailing wage determinations may not be applicable to wage determinations issued pursuant to section 4(c). As provided in section 2(a)(2), a contractor may satisfy its fringe benefit obligations under any wage determination "by furnishing any equivalent combinations of fringe benefits or by making equivalent or differential payments in cash" in accordance with the rules and regulations set forth in § 4.177 of this Subpart.

(k) No provision of this section shall be construed as permitting a successor contractor to pay its employees less than the wages and fringe benefits to which such employees would have been entitled under the predecessor contractor's collective bargaining agreement. Thus, some of the principles discussed in § 4.167 may not be applicable in section 4(c) successorship situations. For example, if the predecessor contractor's collective bargaining agreement did not provide for the deduction from employees' wages of the reasonable cost or fair value for providing board, lodging, or other facilities, then the successor also may not include such costs as part of the applicable minimum wage specified in the wage determination. Likewise, unless the predecessor contractor's agreement allowed a tip credit (§ 4.6(q)), the successor contractor may not take a tip credit toward satisfying the minimum wage requirements under sections 2(a)(1) and 4(c).

#### Compliance with Compensation Standards

##### § 4.164 [Reserved]

##### § 4.165 Wage payments and fringe benefits—in general.

(a)(1) Monetary wages specified under the Act shall be paid to the employees

to whom they are due promptly and in no event later than one pay period following the end of the pay period in which they are earned. No deduction, rebate, or refund is permitted, except as hereinafter stated. The same rules apply to cash payments authorized to be paid with the statutory monetary wages as equivalents of determined fringe benefits (see § 4.177).

(2) The Act makes no distinction, with respect to its compensation provisions, between temporary, part-time, and full-time employees, and the wage and fringe benefit determinations apply, in the absence of an express limitation, equally to all such service employees engaged in work subject to the Act's provisions. (See § 4.176 regarding fringe benefit payments to temporary and part-time employees.)

(b) The Act does not prescribe the length of the pay period. However, for purposes of administration of the Act, and to conform with practices required under other statutes that may be applicable to the employment, wages and hours worked must be calculated on the basis of a fixed and regularly recurring workweek of seven consecutive 24-hour workday periods, and the records must be kept on this basis. It is appropriate to use this workweek for the pay period. A bi-weekly or semimonthly pay period may, however, be used if advance notification is given to the affected employees. A pay period longer than semimonthly is not recognized as appropriate for service employees and wage payments at greater intervals will not be considered as constituting proper payments in compliance with the Act.

(c) The prevailing rate established by a wage determination under the Act is a minimum rate. A contractor is not precluded from paying wage rates in excess of those determined to be prevailing in the particular locality. Nor does the Act affect or require the changing of any provisions of union contracts specifying higher monetary wages or fringe benefits than those contained in an applicable determination. However, if an applicable wage determination contains a wage or fringe benefit provision for a class of service employees which is higher than that specified in an existing union agreement, the determination's provision must be observed for any work performed on a contract subject to that determination.

##### § 4.166 Wage payments—unit of payment.

The standard by which monetary wage payments are measured under the Act is the wage rate per hour. An hourly



wage rate is not, however, the only unit for payment of wages that may be used for employees subject to the Act. Employees may be paid on a daily, weekly, or other time basis, or by piece or task rates, so long as the measure of work and compensation used, when translated or reduced by computation to an hourly basis each workweek, will provide a rate per hour that will fulfill the statutory requirement. Whatever system of payment is used, however, must ensure that each hour of work in performance of the contract is compensated at not less than the required minimum rate. Failure to pay for certain hours at the required rate cannot be transformed into compliance with the Act by reallocating portions of payments made for other hours which are in excess of the specified minimum.

#### **§ 4.167 Wage payments—Medium of payment.**

The wage payment requirements under the Act for monetary wages specified under its provisions will be satisfied by the timely payment of such wages to the employee either in cash or negotiable instrument payable at par. Such payment must be made finally and unconditionally and "free and clear." Scrip, tokens, credit cards, "dope checks", coupons, salvage material, and similar devices which permit the employer to retain and prevent the employee from acquiring control of money due for the work until some time after the pay day for the period in which it was earned, are not proper mediums of payment under the Act. If, as is permissible, they are used as a convenient device for measuring earnings or allowable deductions during a single pay period, the employee cannot be charged with the loss or destruction of any of them and the employer may not, because the employee has not actually redeemed them, credit itself with any which remain outstanding on the pay day in determining whether it has met the requirements of the Act. The employer may not include the cost of fringe benefits or equivalents furnished as required under section 2(a)(2) of the Act, as a credit toward the monetary wages it is required to pay under section 2(a)(1) or 2(b) of the Act (see § 4.170). However, the employer may generally include, as a part of the applicable minimum wage which it is required to pay under the Act, the reasonable cost or fair value, as determined by the Administrator, of furnishing an employee with "board, lodging, or other facilities," as defined in Part 531 of this title, in situations where such facilities are customarily furnished to employees, for the convenience of the

employees, not primarily for the benefit of the employer, and the employees' acceptance of them is voluntary and uncoerced. The determination of reasonable cost or fair value will be in accordance with the Administrator's regulations under the Fair Labor Standards Act, contained in such Part 531 of this title. While employment on contracts subject to the Act would not ordinarily involve situations in which service employees would receive tips from third persons, the treatment of tips for wage purposes in the situations where this may occur should be understood. For purposes of this Act, tips may generally be included in wages in accordance with the regulations under the Fair Labor Standards Act, contained in Part 531 (See also § 4.6(q).) The general rule under that Act is that the amount paid a tipped employee by his employer is deemed to be increased on account of tips by an amount determined by the employer, not in excess of 40 percent of the minimum wage applicable under section 6 of that Act, effective January 1, 1980. Thus, the tip credit taken by an employer subject to the Service Contract Act may not exceed \$1.34 per hour after December 31, 1980. (See § 4.163(k) for exceptions in section 4(c) situations.) In no event shall the sum credited be in excess of the value of tips actually received by the employee.

#### **§ 4.168 Wage payments—deductions from wages paid.**

(a) The wage requirements of the Act will not be met where unauthorized deductions, rebates, or refunds reduce the wage payment made to the employee below the minimum amounts required under the provisions of the Act and the regulations thereunder, or where the employee fails to receive such amounts free and clear because he "kicks back" directly or indirectly to the employer or to another person for the employer's benefit the whole or part of the wage delivered to him. Authorized deductions are limited to those required by law, such as taxes payable by employees required to be withheld by the employer and amounts due employees which the employer is required by court order to pay to another; deductions allowable for the reasonable cost or fair value of board, lodging, and facilities furnished as set forth in § 4.167; and deductions of amounts which are authorized to be paid to third persons for the employee's account and benefit pursuant to his voluntary assignment or order or a collective bargaining agreement with bona fide representatives of employees which is applicable to the employer.

Deductions for amounts paid to third persons on the employee's account which are not so authorized or are contrary to law or from which the contractor, subcontractor or any affiliated person derives any payment, rebate, commission, profit, or benefit directly or indirectly, may not be made if they cut into the wage required to be paid under the Act. The principles applied in determining the permissibility of deductions for payments made to third persons are explained in more detail in §§ 531.38-531.40 of this title.

(b) *Cost of maintaining and furnishing uniforms.* If the employees are required to wear uniforms either by the employer, the nature of the job, or the Government contract, then the cost of furnishing and maintaining the uniforms is deemed to be a business expense of the employer and such cost may not be borne by the employees to the extent that to do so would reduce the employee's compensation below that required by the Act. Since it may be administratively difficult and burdensome for employers to determine the actual cost incurred by all employees for maintaining their own uniforms, payment in accordance with the following standards is considered sufficient for the contractor to satisfy its wage obligations under the Act:

(1) The contractor furnishes all employees with an adequate number of uniforms without cost to the employees or reimburses employees for the actual cost of the uniforms. (2) Where uniform cleaning and maintenance is made the responsibility of the employee, the contractor reimburses all employees for such cleaning and maintenance at the rate of \$3.35 a week (or 67 cents a day). However, there is no requirement that employees be reimbursed for uniform maintenance costs in those instances where the uniforms furnished are made of "wash and wear" materials, may be routinely washed and dried with other personal garments, and do not generally require dry cleaning, commercial laundering, or any other special treatment because of heavy soiling in work usage or in order to meet the cleanliness or appearance standards set by the terms of the Government contract, by the contractor, by law, or by the nature of the work. This limitation does not apply where a different provision has been set forth on the applicable wage determination. Since employees are generally required to wear a clean uniform each day regardless of the number of hours the employee may work that day, the preceding weekly amount generally may be reduced to the stated daily



equivalent but not to an hourly equivalent. A contractor may reimburse employees at a different rate if the contractor furnishes affirmative proof as to the actual cost to the employees of maintaining their uniforms or if a different rate is provided for in a bona fide collective bargaining agreement covering the employees working on the contract.

(c) Stipends, allowances or other payments made directly to an employee by a party other than the employer (such as a stipend for training paid by the Veterans Administration) are not part of "wages" and the employer may not claim credit for such payments toward its monetary obligations under the Act.

#### § 4.169 Wage payments—work subject to different rates.

If an employee during a workweek works in different capacities in the performance of the contract and two or more rates of compensation under section 2 of the Act are applicable to the classes of work which he or she performs, the employee must be paid the highest of such rates for all hours worked in the workweek unless it appears from the employer's records or other affirmative proof which of such hours were included in the periods spent in each class of work. The rule is the same where such an employee is employed for a portion of the workweek in work not subject to the Act, for which compensation at a lower rate would be proper if the employer by his records or other affirmative proof, segregated the worktime thus spent.

#### § 4.170 Furnishing fringe benefits or equivalents.

(a) *General.* Fringe benefits required under the Act shall be furnished, separate from and in addition to the specified monetary wages, by the contractor or subcontractor to the employees engaged in performance of the contract, as specified in the determination of the Secretary or his authorized representative and prescribed in the contract documents. Section 2(a)(2) of the Act provides that the obligation to furnish the specified benefits "may be discharged by furnishing any equivalent combinations of fringe benefits or by making equivalent or differential payments in cash under rules and regulations established by the Secretary." The governing rules and regulations for furnishing such equivalents are set forth in § 4.177 of this Subpart. An employer cannot offset an amount of monetary wages paid in excess of the wages required under the determination in order to satisfy his fringe benefit

obligations under the Act, and must keep appropriate records separately showing amounts paid for wages and amounts paid for fringe benefits.

(b) *Meeting the requirement, in general.* The various fringe benefits listed in the Act and in § 4.162(a) are illustrative of those which may be found to be prevailing for service employees in a particular locality. The benefits which an employer will be required to furnish employees performing on a particular contract will be specified in the contract documents. A contractor may dispose of certain of the fringe benefit obligations which may be required by an applicable fringe benefit determination, such as pension, retirement, or health insurance, by irrevocably paying the specified contributions for fringe benefits to an independent trustee or other third person pursuant to an existing "bona fide" fund, plan, or program on behalf of employees engaged in work subject to the Act's provisions. Where such a plan or fund does not exist, a contractor must discharge his obligation relating to fringe benefits by furnishing either an equivalent combination of "bona fide" fringe benefits or by making equivalent payments in cash to the employee, in accordance with the regulations in § 4.177.

#### § 4.171 "Bona fide" fringe benefits.

(a) To be considered a "bona fide" fringe benefit for purposes of the Act, a fringe benefit plan, fund, or program must constitute a legally enforceable obligation which meets the following criteria:

(1) The provisions of a plan, fund, or program adopted by the contractor, or by contract as a result of collective bargaining, must be specified in writing, and must be communicated in writing to the affected employees. Contributions must be made pursuant to the terms of such plan, fund, or program. The plan may be either contractor-financed or a joint contractor-employee contributory plan. However, any contributions made by employees must be voluntary, and if such contributions are made through payroll deductions, such deductions must be made in accordance with § 4.168. No contribution toward fringe benefits made by the employees themselves, or fringe benefits provided from monies deducted from the employee's wages may be included or used by an employer in satisfying any part of any fringe benefit obligation under the Act.

(2) The primary purpose of the plan must be to provide systematically for the payment of benefits to employees on account of death, disability, advanced age, retirement, illness, medical

expenses, hospitalization, supplemental unemployment benefits, and the like.

(3) The plan must contain a definite formula for determining the amount to be contributed by the contractor and a definite formula for determining the benefits for each of the employees participating in the plan or the benefits provided under the plan must be specified or definitely determinable on an actuarial basis.

(4) Except as provided in paragraph (b), the contractor's contributions must be paid irrevocably to a trustee or other third person pursuant to an insurance agreement, trust or other funded arrangement. The trustee must assume the usual fiduciary responsibilities imposed upon trustees by applicable law. The trust or fund must be set up in such a way that in no event will the contractor be able to recapture any of the contributions paid in nor in any way divert the funds to its own use or benefit.

(5) Benefit plans or trusts of the types listed in 26 U.S.C. 401(a) must be approved by the Internal Revenue Service as satisfying the requirements of section 401(a) of the Internal Revenue Code and meet the requirements of the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001, et seq. and regulations thereunder.

(6) It should also be noted that such plans must meet certain other criteria as set forth in § 778.215 of 29 CFR 778 in order for any contributions to be excluded from computation of the regular rate of pay for overtime purposes under the Fair Labor Standards Act (§§ 4.180-4.182).

(b)(1) Unfunded self-insured fringe benefit plans (other than fringe benefits such as vacations and holidays which by their nature are normally unfunded) under which contractors allegedly make "out of pocket" payments to provide benefits as expenses may arise, rather than making irrevocable contributions to a trust or other funded arrangement as required under § 4.171(a)(4), are not considered "bona fide" plans or equivalent benefits for purposes of the Act.

(2) A contractor may request approval by the Administrator of an unfunded self-insured plan in order to allow credit for payments under the plan to meet the fringe benefit requirements of the Act. In considering whether such a plan is bona fide, the Administrator will consider such factors as whether it could be reasonably anticipated to provide the prescribed benefits, whether it represents a legally enforceable commitment to provide such benefits, whether it is carried out under a



financially responsible program, and whether the plan has been communicated to the employees in writing. The Administrator in his/her discretion may direct that assets be set aside and preserved in an escrow account or that other protections be afforded to meet the plan's future obligation.

(c) No benefit required by any other Federal law or by any State or local law, such as unemployment compensation, workers' compensation, or social security, is a "bona fide" fringe benefit for purposes of the Act.

(d) The furnishing to an employee of board, lodging, or other facilities under the circumstances described in § 4.167, the cost or value of which is creditable toward the monetary wages specified under the Act, may not be used to offset any fringe benefit obligations, as such items and facilities are not fringe benefits or equivalent benefits for purposes of the Act.

(e) The furnishing of facilities which are primarily for the benefit or convenience of the contractor or the cost of which is properly a business expense of the contractor is not the furnishing of a "bona fide" fringe benefit or equivalent benefit or the payment of wages. This would be true of such items, for example, as relocation expenses, travel and transportation expenses incident to employment, incentive or suggestion awards, and recruitment bonuses, as well as tools and other materials and services incidental to the employer's performance of the contract and the carrying on of his business, and the cost of furnishing, laundering, and maintaining uniforms and/or related apparel or equipment where employees are required by the contractor, by the contractor's Government contract, by law, or by the nature of the work to wear such items. See also § 4.168.

(f) Contributions by contractors for such items as social functions or parties for employees, flowers, cards, or gifts on employee birthdays, anniversaries, etc. (sunshine funds), employee rest or recreation rooms, paid coffee breaks, magazine subscriptions, and professional association or club dues, may not be used to offset any wages or fringe benefits specified in the contract, as such items are not "bona fide" wages or fringe benefits or equivalent benefits for purposes of the Act.

#### § 4.172 Meeting requirements for particular fringe benefits—In general.

Where a fringe benefit determination specifies the amount of the employer's contribution to provide the benefit, the amount specified is the actual minimum cash amount that must be provided by

the employer for the employee. No deduction from the specified amount may be made to cover any administrative costs which may be incurred by the contractor in providing the benefits, as such costs are properly a business expense of the employer. If prevailing fringe benefits for insurance or retirement are determined in a stated amount, and the employer provides such benefits through contribution in a lesser amount, he will be required to furnish the employee with the difference between the amount stated in the determination and the actual cost of the benefits which he provides. Unless otherwise specified in the particular wage determination, such as one reflecting collectively bargained fringe benefit requirements, issued pursuant to Section 4(c) of the Act, every employee performing on a covered contract must be furnished the fringe benefits required by that determination for all hours spent working on that contract up to a maximum of 40 hours per week and 2,080 (i.e., 52 weeks of 40 hours each) per year, as these are the typical number of nonovertime hours of work in a week, and in a year, respectively. Since the Act's fringe benefit requirements are applicable on a contract-by-contract basis, employees performing on more than one contract subject to the Act must be furnished the full amount of fringe benefits to which they are entitled under each contract and applicable wage determination. Where a fringe benefit determination has been made requiring employer contributions for a specified fringe benefit in a stated amount per hour, a contractor employing employees part of the time on contract work and part of the time on other work, may only credit against the hourly amount required for the hours spent on the contract work, the corresponding proportionate part of a weekly, monthly, or other amount contributed by him for such fringe benefits or equivalent benefits for such employees. If, for example, the determination requires health and welfare benefits in the amount of 30 cents an hour and the employer provides hospitalization insurance for such employees at a cost of \$10.00 a week, the employer may credit 25 cents an hour ( $\$10.00 \div 40$ ) toward his fringe benefit obligation for such employees. If an employee works 25 hours on the contract work and 15 hours on other work, the employer cannot allocate the entire \$10.00 to the 25 hours spent on contract work and take credit for 30 cents per hour in that manner, but must spread the cost over the full forty hours.

#### § 4.173 Meeting requirements for vacation fringe benefits.

(a) *Determining length of service for vacation eligibility.* It has been found that for many types of service contracts performed at Federal facilities a successor contractor will utilize the employees of the previous contractor in the performance of the contract. The employees typically work at the same location providing the same services to the same clientele over a period of years, with periodic, often annual, changes of employer. The incumbent contractor, when bidding on a contract, must consider his liability for vacation benefits for those workers in his employ. If prospective contractors who plan to employ the same personnel were not required to furnish these employees with the same prevailing vacation benefits, it would place the incumbent contractor at a distinct competitive disadvantage as well as denying such employees entitlement to prevailing vacation benefits.

(1) Accordingly, most vacation fringe benefit determinations issued under the Act require an employer to furnish to employees working on the contract a specified amount of paid vacation upon completion of a specified length of service with a contractor or successor. This requirement may be stated in the determination, for example, as "one week paid vacation after one year of service with a contractor or successor" or by a determination which calls for "one week's paid vacation after one year of service". Unless specified otherwise in an applicable fringe benefit determination, an employer must take the following two factors into consideration in determining when an employee has completed the required length of service to be eligible for vacation benefits:

(i) The total length of time spent by an employee in any capacity in the continuous service of the present (successor) contractor, including both the time spent in performing on regular commercial work and the time spent in performing on the Government contract itself, and

(ii) Where applicable, the total length of time spent in any capacity as an employee in the continuous service of any predecessor contractor(s) who carried out similar contract functions at the same Federal facility.

(2) The application of these principles may be illustrated by the example given above of a fringe benefit determination calling for "one week paid vacation after one year of service with a contractor or successor". In that example, if a contractor has an



employee who has worked for him for 18 months on regular commercial work and only for 6 months on a Government service contract, that employee would be eligible for the one week vacation since his total service with the employer adds up to more than 1 year. Similarly, if a contractor has an employee who worked for 16 months under a janitorial service contract at a particular Federal base for two different predecessor contractors, and only 6 months with the present employer, that employee would also be considered as meeting the "after one year of service" test and would thus be eligible for the specified vacation.

(3) The "contractor or successor" requirement set forth in paragraph (a)(1) of this section is not affected by the fact that a different contracting agency may have contracted for the services previously or by the agency's dividing and/or combining the contract services. However, prior service as a Federal employee is not counted toward an employee's eligibility for vacation benefits under fringe benefit determinations issued pursuant to the Act.

(4) Some fringe benefit determinations may require an employer to furnish a specified amount of paid vacation upon completion of a specified length of service with the employer, for example, "one week paid vacation after one year of service with an employer". Under such determinations, only the time spent in performing on commercial work and on Government contract work in the employment of the present contractor need be considered in computing the length of service for purposes of determining vacation eligibility.

(5) Whether or not the predecessor contract(s) was covered by a fringe benefit determination is immaterial in determining whether the one year of service test has been met. This qualification refers to work performed before, as well as after, an applicable fringe benefit determination is incorporated into a contract. Also, the fact that the labor standards in predecessor service contract(s) were only those required under the Fair Labor Standards Act has no effect on the applicable fringe benefit determination contained in a current contract.

(b) Eligibility requirement—*continuous service*. Under the principles set forth above, if an employee's total length of service adds up to at least one year, the employee is eligible for vacation with pay. However, such service must have been rendered continuously for a period of not less than one year for vacation eligibility. The term "continuous service" does not require the combination of two entirely

separate periods of employment. Whether or not there is a break in the continuity of service so as to make an employee ineligible for a vacation benefit is dependent upon all the facts in the particular case. No fixed time period has been established for determining whether an employee has a break in service. Rather, as illustrated below, the reason(s) for an employee's absence from work is the primary factor in determining whether a break in service occurred.

(1) In cases where employees have been granted leave with or without pay by their employer, or are otherwise absent with permission for such reasons as sickness or injury, or otherwise perform no work on the contract because of reasons beyond their control, there would not be a break in service. Likewise, the absence from work for a few days, with or without notice, does not constitute a break in service, without a formal termination of employment. The following specific examples are illustrative situations where it has been determined that a break in service did not occur:

(i) An employee absent for five months due to illness but employed continuously for three years.

(ii) A strike after which employees returned to work.

(iii) An interim period of three months between contracts caused by delays in the procurement process during which time personnel hired directly by the Government performed the necessary services. However, the successor contractor in this case was not held liable for vacation benefits for those employees who had anniversary dates of employment during the interim period because no employment relationship existed during such period.

(iv) A mess hall closed three months for renovation. Contractor employees were considered to be on temporary layoff during the renovation period and did not have a break in service.

(2) Where an employee quits, is fired for cause, or is otherwise terminated (except for temporary layoffs), there would be a break in service even if the employee were rehired at a later date. However, an employee may not be discharged and rehired as a subterfuge to evade the vacation requirement.

(c) *Vesting and payment of vacation benefits*.

(1) In the example given in paragraph (a)(1) of this section of a fringe benefit determination calling for "one week paid vacation after 1 year of service with a contractor or successor", an employee who renders the "one year of service" continuously becomes eligible for the "one week paid vacation" (i.e., 40

hours of paid vacation, unless otherwise specified in an applicable wage determination) upon his anniversary date of employment and upon each succeeding anniversary date thereafter. However, there is no accrual or vesting of vacation eligibility before the employee's anniversary date of employment, and no segment of time smaller than one year need be considered in computing the employer's vacation liability, unless specifically provided for in a particular fringe benefit determination. For example, an employee who has worked 13 months for an employer subject to such stipulations and is separated without receiving any vacation benefit is entitled only to one full week's (40 hours) paid vacation. He would not be entitled to the additional fraction of one-twelfth of one week's paid vacation for the month he worked in the second year unless otherwise stated in the applicable wage determination. An employee who has not met the "one year of service" requirement would not be entitled to any portion of the "one week paid vacation".

(2) Eligibility for vacation benefits specified in a particular wage determination is based on completion of the stated period of past service. The individual employee's anniversary date (and each annual anniversary date of employment thereafter) is the reference point for vesting of vacation eligibility, but does not necessarily mean that the employee must be given the vacation or paid for it on the date on which it is vested. The vacation may be scheduled according to a reasonable plan mutually agreed to and communicated to the employees. A "reasonable" plan may be interpreted to be a plan which allows the employer to maintain uninterrupted contract services but allows the employee some choice, by seniority or similar factor, in the scheduling of vacations. However, the required vacation must be given or payment made in lieu thereof before the next anniversary date, before completion of the current contract, or before the employee terminates employment, whichever occurs first.

(d) *Contractor liability for vacation benefits*.

(1) The liability for an employee's vacation is not prorated among contractors unless specifically provided for under a particular fringe benefit determination. The contractor by whom a person is employed at the time the vacation right vests, i.e., on the employee's anniversary date of employment, must provide the full benefit required by the determination



which is applicable on that date. For example, an employee, who had not previously performed similar contract work at the same facility, was first hired by a predecessor contractor on July 1, 1978. July 1 is the employee's anniversary date. The predecessor's contract ended June 30, 1979, but the employee continued working on the contract for the successor. Since the employee did not have an anniversary date of employment during the predecessor's contract, the predecessor would not have any vacation liability with respect to this employee. However, on July 1, 1979 the employee's entitlement to the full vacation benefit vested and the successor contractor would be liable for the full amount of the employee's vacation benefit.

(2) The requirements for furnishing data relative to employee hiring dates in situations where such employees worked for "predecessor" contractors are set forth in § 4.6. However, a contractor is not relieved from any obligation to provide vacation benefits because of any difficulty in obtaining such data.

*(e) Rate applicable to computation of vacation benefits.*

(1) If an applicable wage determination requires that the hourly wage rate be increased during the period of the contract, the rate applicable to the computation of any required vacation benefits is the hourly rate in effect in the workweek in which the actual paid vacation is provided or the equivalent is paid, as the case may be, and would not be the average of the two hourly rates. This rule would not apply to situations where a wage determination specified the method of computation and the rate to be used.

(2) As set forth in § 4.172, unless specified otherwise in an applicable fringe benefit determination, service employees must be furnished the required amount of fringe benefits for all hours paid for up to a maximum of 40 hours per week and 2,080 hours per year. Thus, an employee on paid vacation leave would accrue and must be compensated for any other applicable fringe benefits specified in the fringe benefit determination, and if any of the other benefits are furnished in the form of cash equivalents, such equivalents must be included with the applicable hourly wage rate in computing vacation benefits or a cash equivalent therefor. The rules and regulations for computing cash equivalents are set forth in § 4.177.

**§ 4.174 Meeting requirements for holiday fringe benefits.**

*(a) Determining eligibility for holiday benefits—in general.*

(1) Most fringe benefit determinations list a specific number of named holidays for which payment is required. Unless specified otherwise in an applicable determination, an employee who performs any work during the workweek in which a named holiday occurs is entitled to the holiday benefit, regardless of whether the named holiday falls on a Sunday, another day during the workweek on which the employee is not normally scheduled to work, or on the employee's day off. In addition, holiday benefits cannot be denied because the employee has not been employed by the contractor for a designated period prior to the named holiday or because the employee did not work the day before or the day after the holiday, unless such qualifications are specifically included in the determination.

(2) An employee who performs no work during the workweek in which a named holiday occurs is generally not entitled to the holiday benefit. However, an employee who performs no work during the workweek because he is on paid vacation or sick leave in accordance with the terms of the applicable fringe benefit determination is entitled to holiday pay or another day off with pay to substitute for the named holiday. In addition, an employee who performs no work during the workweek because of a layoff does not forfeit his entitlement to holiday benefits if the layoff is merely a subterfuge by the contractor to avoid the payment of such benefits.

(3) The obligation to furnish holiday pay for the named holiday may be discharged if the contractor furnishes another day off with pay in accordance with a plan communicated to the employees involved. However, in such instances the holidays named in the fringe benefit determination are the reference points for determining whether an employee is eligible to receive holiday benefits. In other words, if an employee worked in a workweek in which a listed holiday occurred, the employee is entitled to pay for that holiday. Some determinations may provide for a specific number of holidays without naming them. In such instances the contractor is free to select the holidays to be taken in accordance with a plan communicated to the employees involved, and the agreed-upon holidays are the reference points for determining whether an employee is eligible to receive holiday benefits.

*(b) Determining eligibility for holiday benefits—newly hired employees.* The contractor generally is not required to compensate a newly hired employee for

the holiday occurring prior to the hiring of the employee. However, in the one situation where a named holiday falls in the first week of a contract, all employees who work during the first week would be entitled to holiday pay for that day. For example, if a contract to provide services for the period January 1 through December 31 contained a fringe benefit determination listing New Year's Day as a named holiday, and if New Year's Day were officially celebrated on January 2 in the year in question because January 1 fell on a Sunday, employees hired to begin work on January 3 would be entitled to holiday pay for New Year's Day.

*(c) Payment of holiday benefits.*

(1) A full-time employee who is eligible to receive payment for a named holiday must receive a full day's pay up to 8 hours unless a different standard is used in the fringe benefit determination, such as one reflecting collectively bargained holiday benefit requirements issued pursuant to Section 4(c) of the Act or a different historic practice in an industry or locality. Thus, for example, a contractor must furnish 7 hours of holiday pay to a full-time employee whose scheduled workday consists of 7 hours. An employee whose scheduled workday is 10 hours would be entitled to a holiday payment of 8 hours unless a different standard is used in the determination. As discussed in § 4.172, such holiday pay must include the full amount of other fringe benefits to which the employee is entitled.

(2) Unless a different standard is used in the wage determination, a full-time employee who works on the day designated as a holiday must be paid, in addition to the amount he ordinarily would be entitled to for that day's work, the cash equivalent of a full-day's pay up to 8 hours or be furnished another day off with pay.

(3) If the fringe benefit determination lists the employee's birthday as a paid holiday and that day coincides with another listed holiday, the contractor may discharge his obligation to furnish payment for the second holiday by either substituting another day off with pay with the consent of the employee, furnishing holiday benefits of an extra day's pay, or if the employee works on the holiday in question, furnish holiday benefits of two extra days' pay.

(4) As stated in paragraph (a)(1) of this section, an employee's entitlement to holiday pay fully vests by working in the workweek in which the named holiday occurs. Accordingly, any employee who is terminated before receiving the full amount of holiday benefits due him must be paid the



holiday benefits as a final cash payment.

(5) The rules and regulations for furnishing holiday pay to temporary and part-time employees are discussed in § 4.176.

(6) The rules and regulations for furnishing equivalent fringe benefits or cash equivalents in lieu of holiday pay are discussed in § 4.177.

**§ 4.175 Meeting requirements for health, welfare, and/or pension benefits.**

(a) *Determining the required amount of benefits.*

(1) Most fringe benefit determinations containing health and welfare and/or pension requirements specify a fixed payment per hour on behalf of each service employee. These payments are usually also stated as weekly or monthly amounts. As set forth in § 4.172, unless specified otherwise in the applicable determination such payments are due for all hours paid for, including paid vacation, sick leave, and holiday hours, up to a maximum of 40 hours per week and 2,080 hours per year on each contract. The application of this rule can be illustrated by the following examples:

(i) An employee who works 4 days a week, 10 hours a day is entitled to 40 hours of health and welfare and/or pension fringe benefits. If an employee works 3 days a week, 12 hours a day, then such employee is entitled to 36 hours of these benefits.

(ii) An employee who works 32 hours in a workweek and also receives 8 hours of holiday pay is entitled to the maximum of 40 hours of health and welfare and/or pension payments in that workweek. If the employee works more than 32 hours and also received 8 hours of holiday pay, the employee is still only entitled to the maximum of 40 hours of health and welfare and/or pension payments.

(iii) If an employee is off work for two weeks on vacation and received 80 hours of vacation pay, the employee must also receive payment for the 80 hours of health and welfare and/or pension benefits which accrue during the vacation period.

(iv) An employee entitled to two weeks paid vacation who instead works the full 52 weeks in the year, receiving the full 2,080 hours worth of health and welfare and/or pension benefits, would be due an extra 80 hours of vacation pay in lieu of actually taking the vacation; however, such an employee would not be entitled to have an additional 80 hours of health and welfare and/or pension benefits included in his vacation pay.

(2) A fringe benefit determination calling for a specified benefit such as

health insurance contemplates a fixed and definite contribution to a "bona fide" plan (as that term is defined in § 4.171) by an employer on behalf of each employee, based on the monetary cost to the employer rather than on the level of benefits provided. Therefore, in determining compliance with an applicable fringe benefit determination, the amount of the employer's contribution on behalf of each individual employee governs. Thus, as set forth in § 4.172, if a determination should require a contribution to a plan providing a specified fringe benefit and that benefit can be obtained for less than the required contribution, it would be necessary for the employer to make up the difference in cash to the employee, or furnish equivalent benefits, or a combination thereof. The following illustrates the application of this principle: A fringe benefit determination requires a rate of \$36.40 per month employee for a health insurance plan. The employer obtains the health insurance coverage specified at a rate of \$20.45 per month for a single employee, \$30.60 for an employee with spouse, and \$40.90 for an employee with a family. The employer is required to make up the difference in cash or equivalent benefits to the first two classes of employees in order to satisfy the determination, notwithstanding that coverage for an employee would be automatically changed by the employer if the employee's status should change (e.g., single to married) and notwithstanding that the employer's average contribution per employee may be equal to or in excess of \$36.40 per month.

(3) In determining eligibility for benefits under certain wage determinations containing hours or length of service requirements (such as having to work 40 hours in the preceding month), the contractor must take into account time spent by employees on commercial work as well as time spent on the Government contract.

(b) Some fringe benefit determinations specifically provide for health and welfare and/or pension benefits in terms of average cost. Under this concept, a contractor's contributions per employee to a "bona fide" fringe benefit plan are permitted to vary depending upon the individual employee's marital or employment status. However, the firm's total contributions for all service employees enrolled in the plan must average at least the fringe benefit determination requirement per hour per service employee. If the contractor's contributions average less than the amount required by the determination, then the firm must make up the

deficiency by making cash equivalent payments or equivalent fringe benefit payments to all service employees in the plan who worked on the contract during the payment period. Where such deficiencies are made up by means of cash equivalent payments, the payments must be made promptly on the following payday. The following illustrates the application of this principle: The determination requires an average contribution of \$0.84 an hour. The contractor makes payments to bona fide fringe benefit plans on a monthly basis. During a month the firm contributes \$15,000 for the service employees employed on the contract who are enrolled in the plan, and a total of 20,000 man-hours had been worked by all service employees during the month. Accordingly, the firm's average cost would have been  $\$15,000 \div 20,000$  hours or \$0.75 per hour, resulting in a deficiency of \$0.09 per hour. Therefore, the contractor owes the service employees in the plan who worked on the contract during the month an additional \$0.09 an hour for each hour worked on the contract, payable on the next regular payday for wages. Unless otherwise provided in the applicable wage determination, contributions made by the employer for non-service employees may not be credited toward meeting Service Contract Act fringe benefit obligations.

(c) *Employees not enrolled in or excluded from participating in fringe benefit plans.*

(1) Some health and welfare and pension plans contain eligibility exclusions for certain employees. For example, temporary and part-time employees may be excluded from participating in such plans. Also, employees receiving benefits through participation in plans of an employer other than the Government contractor or by a spouse's employer may be prevented from receiving benefits from the contractor's plan because of prohibitions against "double coverage". While such exclusions do not invalidate an otherwise bona fide insurance plan, employer contributions to such a plan cannot be considered to be made on behalf of the excluded employees. Accordingly, under fringe benefit determination requirements as described in the preceding subparagraph (a)(2), the employees excluded from participation in the health insurance plan must be furnished equivalent bona fide fringe benefits or be paid a cash equivalent payment during the period that they are not eligible to participate in the plan.



(2) It is not required that all employees participating in a fringe benefit plan be entitled to receive benefits from that plan at all times. For example, under some plans, newly hired employees who are eligible to participate in an insurance plan from their first day of employment may be prohibited from receiving benefits from the plan during a specified "waiting period". Contributions made on behalf of such employees would serve to discharge the contractor's obligation to furnish the fringe benefit. However, if no contributions are made for such employees, no credit may be taken toward the contractor's fringe benefit obligations.

**(d) Payment of health and welfare and pension benefits.**

(1) Health and welfare and/or pension payments to a "bona fide" insurance plan or trust program may be made on a periodic payment basis which is not less often than quarterly. However, where fringe benefit determinations contemplate a fixed contribution on behalf of each employee, and a contractor exercises his option to make hourly cash equivalent or differential payments, such payments must be made promptly on the regular payday for wages. (See § 4.165.)

(2) The rules and regulations for furnishing health and welfare and pension benefits to temporary and part-time employees are discussed in § 4.176.

(3) The rules and regulations for furnishing equivalent fringe benefits or cash equivalents in lieu of health and welfare and pension benefits are discussed in § 4.177.

**§ 4.176 Payment of fringe benefits to temporary and part-time employees.**

(a) As set forth in § 4.165(a)(2), the Act makes no distinction, with respect to its compensation provisions, between temporary, part-time, and full-time employees. Accordingly, in the absence of express limitations, the provisions of an applicable fringe benefit determination apply to all temporary and part-time service employees engaged in covered work. However, in general, such temporary and part-time employees are only entitled to an amount of the fringe benefits specified in an applicable determination which is proportionate to the amount of time spent in covered work. The application of these principles may be illustrated by the following examples:

(1) Assuming the paid vacation for full-time employees is one week of 40 hours, a part-time employee working a regularly scheduled workweek of 16 hours is entitled to 16 hours of paid

vacation time or its equivalent each year, if all other qualifications are met.

(2) In the case of holidays, a part-time employee working a regularly scheduled workweek of 16 hours would be entitled to two-fifths of the holiday pay due full-time employees. It is immaterial whether or not the holiday falls on a normal workday of the part-time employee. A temporary or casual employee hired during a holiday week, but after the holiday, would be due no holiday benefits for that week.

(3) Holiday or vacation pay obligations to temporary and part-time employees working an irregular schedule of hours may be discharged by paying such employees a proportion of the holiday or vacation benefits due full-time employees based on the number of hours each such employee worked in the workweek prior to the workweek in which the holiday occurs or, with respect to vacations, the number of hours which the employee worked in the year preceding the employee's anniversary date of employment. For example:

(i) An employee works 10 hours during the week preceding July 4, a designated holiday. The employee is entitled to 10/40 of the holiday pay to which a full-time employee is entitled (i.e., 10/40 times 8 = 2 hours holiday pay).

(ii) A part-time employee works 520 hours during the 12 months preceding the employee's anniversary date. Since the typical number of nonovertime hours in a year of work is 2,080, if a full-time employee would be entitled to one week (40 hours) paid vacation under the applicable fringe benefit determination, then the part-time employee would be entitled to 520/2,080 times 40 = 10 hours paid vacation.

(4) A part-time employee working a regularly scheduled workweek of 20 hours would be entitled to one-half of the health and welfare and/or pension benefits specified in the applicable fringe benefit determination. Thus, if the determination requires \$36.40 per month for health insurance, the contractor could discharge his obligation towards the employee in question by providing a health insurance policy costing \$18.20 per month.

(b) A contractor's obligation to furnish the specified fringe benefits to temporary and part-time employees may be discharged by furnishing equivalent benefits, cash equivalents, or a combination thereof in accordance with the rules and regulations set forth in § 4.177.

**§ 4.177 Discharging fringe benefit obligations by equivalent means.**

**(a) In general.**

(1) Section 2(a)(2) of the Act, which provides for fringe benefits that are separate from and in addition to the monetary compensation required under section 2(a)(1), permits an employer to discharge his obligation to furnish the fringe benefits specified in an applicable fringe benefit determination by furnishing any equivalent combinations of "bona fide" fringe benefits or by making equivalent or differential payments in cash. However, credit for such payments is limited to the employer's fringe benefit obligations under section 2(a)(2), since the Act does not authorize any part of the monetary wage required by section 2(a)(1) and specified in the wage determination and the contract, to be offset by the fringe benefit payments or equivalents which are furnished or paid pursuant to section 2(a)(2).

(2) When a contractor substitutes fringe benefits not specified in the fringe benefit determination contained in the contract for fringe benefits which are so specified, the substituted fringe benefits, like those for which the contract provisions are prescribed, must be "bona fide" fringe benefits, as that term is defined in § 4.171.

(3) When a contractor discharges his fringe benefit obligation by furnishing, in lieu of those benefits specified in the applicable fringe benefit determination, other "bona fide" fringe benefits, cash payments, or a combination thereof, the substituted fringe benefits and/or cash payments must be "equivalent" to the benefits specified in the determination. As used in this subpart, the terms "equivalent fringe benefit" and "cash equivalent" mean equal in terms of monetary cost to the contractor. Thus, as set forth in § 4.172, if an applicable fringe benefit determination calls for a particular fringe benefit in a stated amount and the contractor furnished this benefit through contributions in a lesser amount, the contractor must furnish the employee with the difference between the amount stated in the determination and the actual cost of the benefit which the contractor provides. This principle may be illustrated by the example given in § 4.175(a)(2).

**(b) Furnishing equivalent fringe benefits.**

(1) A contractor's obligation to furnish fringe benefits which are stated in a specified cash amount may be discharged by furnishing any combination of "bona fide" fringe benefits costing an equal amount. Thus, if an applicable determination specifies



that 20 cents per hour is to be paid into a pension fund, this fringe benefit obligation will be deemed to be met if, instead, hospitalization benefits costing not less than 20 cents per hour are provided. The same obligation will be met if hospitalization benefits costing 10 cents an hour and life insurance benefits costing 10 cents an hour are provided. As set forth in § 4.171(c), no benefit required to be furnished the employee by any other law, such as workers' compensation, may be credited toward satisfying the fringe benefit requirements of the Act.

(2) A contractor who wishes to furnish equivalent fringe benefits in lieu of those benefits which are not stated in a specified cash amount, such as "one week paid vacation", must first determine the equivalent cash value of such benefits in accordance with the rules set forth in paragraph (c) of this section.

*(c) Furnishing cash equivalents.*

(1) Fringe benefit obligations may be discharged by paying to the employee on his regular payday, in addition to the monetary wage required, a cash amount per hour in lieu of the specified fringe benefits, provided such amount is equivalent to the cost of the fringe benefits required. If, for example, an employee's monetary rate under an applicable determination is \$4.50 an hour, and the fringe benefits to be furnished are hospitalization benefits costing 20 cents an hour and retirement benefits costing 20 cents an hour, the fringe benefit obligation is discharged if instead of furnishing the required fringe benefits, the employer pays the employee, in cash, 40 cents per hour as the cash equivalent of the fringe benefits in addition to the \$4.50 per hour wage rate required under the applicable wage determination.

(2) The hourly cash equivalent of those fringe benefits which are not stated in the applicable determination in terms of hourly cash amounts may be obtained by mathematical computation through the use of pertinent factors such as the monetary wages paid the employee and the hours of work attributable to the period, if any, by which fringe benefits are measured in the determination. If the employee's regular rate of pay is greater than the minimum monetary wage specified in the wage determination and the contract, the former must be used for this computation, and if the fringe benefit determination does not specify any daily or weekly hours of work by which benefits are to be measured, a standard 8-hour day and 40-hour week will be considered applicable. The application of these rules in typical

situations is illustrated in paragraphs (c) (3) through (7) of this section.

(3) Where fringe benefits are stated as a percentage of the monetary rate, the hourly cash equivalent is determined by multiplying the stated percentage by the employees' regular or basic (i.e., wage determination) rate of pay, whichever is greater. For example, if the determination calls for a 5 percent pension fund payment and the employee is paid a monetary rate of \$4.50 an hour, or if the employee earns \$4.50 an hour on a piece-work basis in a particular workweek, the cash equivalent of that payment would be 22½ cents an hour.

(4) If the determination lists a particular fringe benefit in such terms as \$8 a week, the hourly cash equivalent is determined by dividing the amount stated in the determination by the number of working hours to which the amount is attributable. For example, if a determination lists a fringe benefit as "pension—\$8 a week", and does not specify weekly hours, the hourly cash equivalent is 20 cents per hour, i.e., \$8 divided by 40, the standard number of non-overtime working hours in a week.

(5) In determining the hourly cash equivalent of those fringe benefits which are not stated in the determination in terms of a cash amount, but are stated, for example, as "nine paid holidays per year" or "1 week paid vacation after one year of service", the employee's hourly monetary rate of pay is multiplied by the number of hours making up the paid holidays or vacation. Unless the hours contemplated in the fringe benefit are specified in the determination, a standard 8-hour day and 40-hour week is considered applicable. The total annual cost so determined is divided by 2,080, the standard number of non-overtime hours in a year of work, to arrive at the hourly cash equivalent. This principle may be illustrated by the following examples:

(i) If a particular determination lists as a fringe benefit "nine holidays per year" and the employee's hourly rate of pay is \$4.50, the \$4.50 is multiplied by 72 (9 days of 8 hours each) and the result, \$324, is then divided by 2,080 to arrive at the hourly cash equivalent, \$0.1557 an hour. See § 4.174(c)(4).

(ii) If the determination requires "one week paid vacation after one year of service", and the employee's hourly rate of pay is \$4.50, the \$4.50 is multiplied by 40 and the result, \$180.00, is then divided by 2,080 to arrive at the hourly cash equivalent, \$0.0865 an hour.

(6) Where an employer elects to pay an hourly cash equivalent in lieu of a paid vacation, which is computed in accordance with paragraph (c)(5) of this section, such payments need commence

only after the employee has satisfied the "after one year of service" requirement. However, should the employee terminate employment for any reason before receiving the full amount of vested vacation benefits due, the employee must be paid the full amount of any difference remaining as the final cash payment. For example, an employee becomes eligible for a week's vacation pay on March 1. The employer elects to pay this employee an hourly cash equivalent beginning that date; the employee terminates employment on March 31. Accordingly, as this employee has received only ½ of the vacation pay to which he/she is entitled, the employee is due the remaining ½ upon termination. As set forth in § 4.173(e), the rate applicable to the computation of cash equivalents for vacation benefits is the hourly wage rate in effect at the time such equivalent payments are actually made.

(d) *Furnishing a combination of equivalent fringe benefits and cash payments.* Fringe benefit obligations may be discharged by furnishing any combination of cash or fringe benefits as illustrated in the preceding paragraphs of this section, in monetary amounts the total of which is equivalent, under the rules therein stated, to the determined fringe benefits specified in the contract. For example, if an applicable determination specifies that 20 cents per hour is to be paid into a pension fund, this fringe benefit obligation will be deemed to be met if instead, hospitalization benefits costing 15 cents an hour and a cash equivalent payment of 5 cents an hour are provided.

(e) *Effect of equivalents in computing overtime pay.* Section 6 of the Act excludes from the regular or basic hourly rate of an employee, for purposes of determining the overtime pay to which the employee is entitled under any other Federal law, those fringe benefit payments computed under the Act which are excluded from the regular rate under the Fair Labor Standards Act by provisions of section 7(e) (formerly designated as section 7(d)) of that Act (29 U.S.C. 207(e)). Fringe benefit payments which qualify for such exclusion are described in Subpart C of Regulations, 29 CFR Part 778. When such fringe benefits are required to be furnished to service employees engaged in contract performance, the right to compute overtime pay in accordance with the above rule is not lost to a contractor or subcontractor because it discharges its obligation under this Act to furnish such fringe benefits through alternative equivalents as provided in this section. If it furnishes equivalent



benefits or makes cash payments, or both, to such an employee as authorized herein, the amounts thereof, which discharge the employer's obligation to furnish such specified fringe benefits, may be excluded pursuant to this Act from the employee's regular or basic rate of pay in computing any overtime pay due the employee under any other Federal law. No such exclusion can operate, however, to reduce an employee's regular or basic rate of pay below the monetary wage rate specified as the applicable minimum wage rates under sections 2(a)(1), 2(b), or 4(c) of this Act or under other law or an employment contract.

#### § 4.178 Computation of hours worked.

Since employees subject to the Act are entitled to the minimum compensation specified under its provisions for each hour worked in performance of a covered contract, a computation of their hours worked in each workweek when such work under the contract is performed is essential. Determinations of hours worked will be made in accordance with the principles applied under the Fair Labor Standards Act as set forth in Part 785 of this title which is incorporated herein by reference. In general, the hours worked by an employee include all periods in which the employee is suffered or permitted to work whether or not required to do so, and all time during which the employee is required to be on duty or to be on the employer's premises or to be at a prescribed workplace. The hours worked which are subject to the compensation provisions of the Act are those in which the employee is engaged in performing work on contracts subject to the Act. However, unless such hours are adequately segregated, as indicated in § 4.179, compensation in accordance with the Act will be required for all hours of work in any workweek in which the employee performs any work in connection with the contract, in the absence of affirmative proof to the contrary that such work did not continue throughout the workweek.

#### § 4.179 Identification of contract work.

Contractors and subcontractors under contracts subject to the Act are required to comply with its compensation requirements throughout the period of performance on the contract and to do so with respect to all employees who in any workweek are engaged in performing work on such contracts. If such a contractor during any workweek is not exclusively engaged in performing such contracts, or if while so engaged it has employees who spend a portion but not all of their worktime in the

workweek in performing work on such contracts, it is necessary for the contractor to identify accurately in its records, or by other means, those periods in each such workweek when the contractor and each such employee performed work on such contracts. In cases where contractors are not exclusively engaged in Government contract work, and there are adequate records segregating the periods in which work was performed on contracts subject to the Act from periods in which other work was performed, the compensation specified under the Act need not be paid for hours spent on non-contract work. However, in the absence of records adequately segregating non-covered work from the work performed on or in connection with the contract, all employees working in the establishment or department where such covered work is performed shall be presumed to have worked on or in connection with the contract during the period of its performance, unless affirmative proof establishing the contrary is presented. Similarly, in the absence of such records, an employee performing any work on or in connection with the contract in a workweek shall be presumed to have continued to perform such work throughout the workweek, unless affirmative proof establishing the contrary is presented. Even where a contractor can segregate Government from non-Government work, it is necessary that the contractor comply with the requirements of section 6(e) of the FLSA discussed in § 4.160.

#### Overtime Pay of Covered Employees

##### § 4.180 Overtime pay—in general.

The Act does not provide for compensation of covered employees at premium rates for overtime hours of work. Section 6 recognizes however, that other Federal laws may require such compensation to be paid to employees working on or in connection with contracts subject to the Act (see § 4.181) and prescribes, for purposes of such laws, the manner in which fringe benefits furnished pursuant to the Act shall be treated in computing such overtime compensation as follows: "In determining any overtime pay to which such service employees are entitled under any Federal law, the regular or basic hourly rate of such an employee shall not include any fringe benefit payments computed hereunder which are excluded from the regular rate under the Fair Labor Standards Act by provisions of section 7(d) [now section 7(e)] thereof." Fringe benefit payments which qualify for such exclusion are described in Part 778, Subpart C of this

title. The interpretations there set forth will be applied in determining the overtime pay to which covered service employees are entitled under other Federal statutes. The effect of section 6 of the Act in situations where equivalent fringe benefits or cash payments are provided in lieu of the specified fringe benefits is stated in § 4.177(e) of this part, and illustrated in § 4.182.

##### § 4.181 Overtime pay provisions of other Acts.

(a) *Fair Labor Standards Act.* Although provision has not been made for insertion in Government contracts of stipulations requiring compliance with the overtime provisions of the Fair Labor Standards Act, contractors and subcontractors performing contracts subject to the McNamara-O'Hara Service Contract Act may be required to compensate their employees working on or in connection with such contracts for overtime work pursuant to the overtime pay standards of the Fair Labor Standards Act. This is true with respect to employees engaged in interstate or foreign commerce or in the production of goods for such commerce (including occupations and processes closely related and directly essential to such production) and employees employed in enterprises which are so engaged, subject to the definitions and exceptions provided in such Act. Such employees, except as otherwise specifically provided in such Act, must receive overtime compensation at a rate of not less than 1½ times their regular rate of pay for all hours worked in excess of the applicable standard in a workweek. See Part 778 of this title. However, the Fair Labor Standards Act provides no overtime pay requirements for employees, not within such interstate commerce coverage of the Act, who are subject to its minimum wage provisions only by virtue of the provisions of section 6(e), as explained in § 4.180.

(b) *Contract Work Hours and Safety Standards Act.* (1) The Contract Work Hours and Safety Standards Act (40 U.S.C. 327-332) applies generally to Government contracts, including service contracts in excess of \$2,500, which may require or involve the employment of laborers and mechanics. Guards, watchmen, and many other classes of service employees are laborers or mechanics within the meaning of such Act. However, employees rendering only professional services, seamen, and as a general rule those whose work is only clerical or supervisory or nonmanual in nature, are not deemed laborers or mechanics for purposes of the Act. The wages of every laborer or mechanic for



performance of work on such contracts must include compensation at a rate not less than  $1\frac{1}{2}$  times the employee's basic rate of pay for all hours worked in any workweek in excess of 40 or in excess of eight on any calendar days therein, whichever is the greater number of overtime hours. Exemptions are provided for certain transportation and communications contracts, contracts for the purchase of supplies ordinarily available in the open market, and work required to be done in accordance with the provisions of the Walsh-Healey Act.

(2) Regulations concerning this Act are contained in Subparts A and C of 29 CFR Part 5 which permit overtime pay to be computed in the same manner as under the Fair Labor Standards Act, subject of course to the differences in computations required by reason of the daily overtime provision of the Contract Work Hours and Safety Standards Act, which has no counterpart in the Fair Labor Standards Act.

(3) Although the application of the Contract Work Hours and Safety Standards Act does not depend on inclusion of its requirements in provisions physically made part of the contract, the Act and the regulations of the Secretary require such provisions to be set forth in contract clauses. (See § 5.5(c) of this subtitle.)

(c) *Walsh-Healey Public Contracts Act.* As pointed out in § 4.117, while some Government contracts may be subject both to the McNamara-O'Hara Service Contract Act and to the Walsh-Healey Public Contracts Act, the employees performing work on the contract which is subject to the latter Act are, when so engaged, exempt from the provisions of the former. They are, however, subject to the overtime provisions of the Walsh-Healey Act if, in any workweek, any of the work performed for the employer is subject to such Act and if, in such workweek, the total hours worked by the employee for the employer (whether wholly or only partly on such work) exceed 40 hours in the workweek or 8 hours in any day therein. In any such workweek the Walsh-Healey Act requires payment of overtime compensation at a rate not less than  $1\frac{1}{2}$  times the employee's basic rate for such weekly or daily overtime hours, whichever is greater in number. The overtime pay provisions of the Walsh-Healey Act are discussed in greater detail in 41 CFR Part 50-201.

#### § 4.182 Overtime pay of service employees entitled to fringe benefits.

Reference is made in § 4.180 to the rules prescribed by section 6 of the Act which permit exclusion of certain fringe benefits and equivalents provided

pursuant to section 2(a)(2) of the Act from the regular or basic rate of pay when computing overtime compensation of a service employee under the provisions of any other Federal law. As provided in § 4.177, not only those fringe benefits excludable under section 6 as benefits determined and specified under section 2(a)(2), but also equivalent fringe benefits and cash payments furnished in lieu of the specified benefits may be excluded from the regular or basic rate of such an employee. The application of this rule may be illustrated by the following examples:

(a) The A company pays a service employee \$4.50 an hour in cash under a wage determination which requires a monetary rate of not less than \$4 and a fringe benefit contribution of 50 cents which would qualify for exclusion from the regular rate under section 7(e) of the Fair Labor Standards Act. The contractor pays the 50 cents in cash because he made no contributions for fringe benefits specified in the determination and the contract. Overtime compensation in this case would be computed on a regular or basic rate of \$4 an hour.

(b) The B company has for some time been paying \$4.25 an hour to a service employee as his basic cash wage plus 25 cents an hour as a contribution to a welfare and pension plan, which contribution qualifies for exclusion from the regular rate under the Fair Labor Standards Act. For performance of work under a contract subject to the Act a monetary rate of \$4 and a fringe benefit contribution of 50 cents (also qualifying for such exclusion) are specified because they are found to be prevailing for such employees in the locality. The contractor may credit the 25 cent welfare and pension contribution toward the discharge of his fringe benefit obligation under the contract but must also make an additional contribution of 25 cents for the specified or equivalent fringe benefits or pay the employee an additional 25 cents in cash. These contributions or equivalent payments may be excluded from the employee's regular rate which remains \$4.25, the rate agreed upon as the basic cash wage.

(c) The C company has been paying \$4 an hour as its basic cash wage on which the firm has been computing overtime compensation. For performance of work on a contract subject to the Act the same rate of monetary wages and a fringe benefit contribution of 50 cents an hour (qualifying for exclusion from the regular rate under the Fair Labor Standards Act) are specified in accordance with a determination that

these are the monetary wages and fringe benefits prevailing for such employees in the locality. The contractor is required to continue to pay at least \$4 an hour in monetary wages and at least this amount must be included in the employee's regular or basic rate for overtime purposes under applicable Federal law. The fringe benefit obligation under the contract would be discharged if 50 cents of the contributions for fringe benefits were for the fringe benefits specified in the contract or equivalent benefits as defined in § 4.177. The company may exclude such fringe benefit contributions from the regular or basic rate of pay of the service employee in computing overtime pay due.

#### Notice to Employees

##### § 4.183 Employees must be notified of compensation required.

The Act, in section 2(a)(4), and the regulations thereunder in § 4.6(e), require all contracts subject to the Act which are in excess of \$2,500 to contain a clause requiring the contractor or subcontractor to notify each employee commencing work on a contract to which the Act applies of the compensation required to be paid such employee under section 2(a)(1) and the fringe benefits required to be furnished under section 2(a)(2). A notice form (WH Publication 1313 and any applicable wage determination) provided by the Wage and Hour Division is to be used for this purpose. It may be delivered to the employee or posted as stated in § 4.184.

##### § 4.184 Posting of notice.

Posting of the notice provided by the Wage and Hour Division shall be in a prominent and accessible place at the worksite, as required by § 4.6(e). The display of the notice in a place where it may be seen by employees performing on the contract will satisfy the requirement that it be in a "prominent and accessible place". Should display be necessary at more than one site, in order to assure that it is seen by such employees, additional copies of the poster may be obtained without cost from the Division. The contractor or subcontractor is required to notify each employee of the compensation due or attach to the poster any applicable wage determination specified in the contract listing all minimum monetary wages and fringe benefits to be paid or furnished to the classes of service employees performing on the contract.



## Records

### § 4.185 Recordkeeping requirements.

The records which a contractor or subcontractor is required to keep concerning employment of employees subject to the Act are specified in § 4.6(g) of Subpart A of this part. They are required to be maintained for 3 years from the completion of the work, and must be made available for inspection and transcription by authorized representatives of the Administrator. Such records must be kept for each service employee performing work under the contract, for each workweek during the performance of the contract. If the required records are not separately kept for the service employees performing on the contract, it will be presumed, in the absence of affirmative proof to the contrary, that all service employees in the department or establishment where the contract was performed were engaged in covered work during the period of performance. (See § 4.179.)

### § 4.186 [Reserved]

## Subpart E—Enforcement

### § 4.187 Recovery of underpayments.

(a) The Act, in section 3(a), provides that any violations of any of the contract stipulations required by sections 2(a)(1), 2(a)(2), or 2(b) of the Act, shall render the party responsible liable for the amount of any deductions, rebates, refunds, or underpayments (which includes non-payment) of compensation due to any employee engaged in the performance of the contract. So much of the accrued payments due either on the contract or on any other contract (whether subject to the Service Contract Act or not) between the same contractor and the Government may be withheld in a deposit fund as is necessary to pay the employees. In the case of requirements-type contracts, it is the contracting agency, and not the using agencies, which has the responsibility for complying with a withholding request by the Secretary or authorized representative. The Act further provides that on order of the Secretary (or authorized representatives), any compensation which the head of the Federal agency or the Secretary has found to be due shall be paid directly to the underpaid employees from any accrued payments withheld. In order to effectuate the efficient administration of this provision of the Act, such withheld funds shall be transferred to the Department of Labor for disbursement to the underpaid employees on order of the Secretary or his or her authorized

representatives, or an Administrative Law Judge, and are not paid directly to such employees by the contracting agency without the express prior consent of the Administrator. (See Decision of the Comptroller General, B-170784, February 12, 1971.) It is mandatory for a contracting officer to adhere to a request from the Department of Labor to withhold funds where such funds are available. (See Decision of the Comptroller General, B-109257, October 14, 1952, arising under the Walsh-Healey Act.) Contract funds which are or may become due a contractor under any contract with the United States may be withheld prior to the institution of administrative proceedings by the Secretary. (*McCasland v. U.S. Postal Service*, 82 CCH Labor Cases ¶ 33,607 (N.D. N.Y. 1977.))

#### (b) Priority to withheld funds.

The Comptroller General has afforded employee wage claims priority over an Internal Revenue Service levy for unpaid taxes. (See Decisions of the Comptroller General, B-170784, February 17, 1971; B-189137, August 1, 1977; 546 Comp. Gen. 499 (1977); 55 Comp. Gen. 744 (1976), arising under the Davis-Bacon Act; B-178198, August 30, 1973; B-161460, May 25, 1967.)

(1) As the Comptroller General has stated, "[t]he legislative histories of these labor statutes [Service Contract Act and Contract Work Hours and Safety Standards Act, 41 U.S.C. 327, *et seq.*] disclose a progressive tendency to extend a more liberal interpretation and construction in successive enactments with regard to worker's benefits, recovery and repayment of wage underpayments. Further, as remedial legislation, it is axiomatic that they are to be liberally construed". (Decision of the Comptroller General, B-170784, February 17, 1971.)

(2) Since section 3(a) of the Act provides that accrued contract funds withheld to pay employees wages must be held in a deposit fund, it is the position of the Department of Labor that monies so held may not be used or set aside for agency procurement costs. To hold otherwise would be inequitable and contrary to public policy, since the employees have performed work from which the Government has received the benefit (see *National Surety Corporation v. U.S.*, 132 Ct. Cl. 724, 728, 135 F. Supp. 381 (1955), cert. denied, 350 U.S. 902), and to give contracting agency procurement claims priority would be to require employees to pay for the breach of contract between the employer and the agency. The Comptroller General has sanctioned priority being afforded wage underpayments over the procurement

costs of the contracting agency following a contractor's default or termination for cause. Decision of the Comptroller General, B-167000, June 26, 1969; B-178198, August 30, 1973; and B-189137, August 1, 1977.

(3) Wage claims have priority over procurement costs and tax liens without regard to when the competing claims were raised. See Decisions of the Comptroller General, B-161460, May 25, 1967; B-189137, August 1, 1977.

(4) Wages due workers underpaid on the contract have priority over any assignee of the contractor, including assignments made under the Assignment of Claims Act, 311 U.S.C. 203, 41 U.S.C. 115, to funds withheld, since an assignee can acquire no greater rights to withheld funds than the assignor has in the absence of an assignment. See *Modern Industrial Bank v. U.S.*, 101 Ct. Cl. 808 (1944); *Royal Indemnity Co. v. United States*, 178 Ct. Cl. 48, 371 F. 2d 482 (1967), cert. denied, 389 U.S. 833; *Newark Insurance Co. v. U.S.*, 149 Ct. Cl. 170, 181 F. Supp. 246 (1960); *Henningsen v. United States Fidelity and Guaranty Company*, 208 U.S. 404 (1908). Where employees have been underpaid, the assignor has no right to assign funds since the assignor has no property rights to amounts withheld from the contract to cover underpayments of workers which constitute a violation of the law and the terms, conditions, and obligations under the contract. (Decision of the Comptroller General, B-164881, August 14, 1968; B-178198, August 30, 1973; 56 Comp. Gen. 499 (1977); 55 Comp. Gen. 744 (1976); *The National City Bank of Evansville v. United States*, 143 Ct. Cl. 154, 163 F. Supp. 846 (1958); *National Surety Corporation v. United States*, 132 Ct. Cl. 724, 135 F. Supp. 381 (1955), cert. denied, 350 U.S. 902.)

(5) The Comptroller General, recognizing that unpaid laborers have an equitable right to be paid from contract retainages, has also held that wage underpayments under the Act have priority over any claim by the trustee in bankruptcy. 56 Comp. Gen. 499 (1977), citing *Pearlman v. Reliance Insurance Company*, 371 U.S. 132 (1962); *Hadden v. United States*, 132 Ct. Cl. 529 (1955), in which the courts gave priority to sureties who had paid unpaid laborers over the trustee in bankruptcy.

(c) Section 5(b) of the Act provides that if the accrued payments withheld under the terms of the contract are insufficient to reimburse all service employees with respect to whom there has been a failure to pay the compensation required pursuant to the Act, the United States may bring action



against the contractor, subcontractor, or any sureties in any court of competent jurisdiction to recover the remaining amount of underpayments. The Service Contract Act is not subject to the statute of limitations in the Portal to Portal Act, 29 U.S.C. 255, and contains no prescribed period within which such an action must be instituted; it has therefore been held that the general period of six years prescribed by 28 U.S.C. 2415 applies to such actions, *United States of America v. Deluxe Cleaners and Laundry, Inc.*, 511 F.2d 929 (C.A. 4, 1975). Any sums thus recovered by the United States shall be held in the deposit fund and shall be paid, on the order of the Secretary, directly to the underpaid employees. Any sum not paid to an employee because of inability to do so within 3 years shall be covered into the Treasury of the United States as miscellaneous receipts.

(d) Releases or waivers executed by employees for unpaid wages and fringe benefits due them are without legal effect. As stated by the Supreme Court in *Brooklyn Savings Bank v. O'Neil*, 324 U.S. 697, 704, (1945), arising under the Fair Labor Standards Act:

"Where a private right is granted in the public interest to effectuate a legislative policy, waiver of a right so charged or colored with the public interest will not be allowed where it would thwart the legislative policy which it was designed to effectuate."

See also *Schulte, Inc. v. Gangi*, 328 U.S. 108 (1946); *United States v. Morley Construction Company*, 98 F.2d 781 (C.A. 2, 1938), cert. denied, 305 U.S. 651.

Further, as noted above, monies not paid to employees to whom they are due because of violation are covered into the U.S. Treasury as provided by section 5(b) of the Act.

(e)(1) The term "party responsible" for violations in section 3(a) of the Act is the same term as contained in the Walsh-Healey Public Contracts Act, and therefore, the same principles are applied under both Acts. An officer of a corporation who actively directs and supervises the contract performance, including employment policies and practices and the work of the employees working on the contract, is a party responsible and liable for the violations, individually and jointly with the company (*S & G Coal Sales, Inc.*, Decision of the Hearing Examiner, PC-946, January 21, 1965, affirmed by the Administrator June 8, 1965; *Tennessee Processing Co., Inc.*, Decision of the Hearing Examiner, PC-790, September 28, 1965).

(2) The failure to perform a statutory public duty under the Service Contract

Act is not only a corporate liability but also the personal liability of each officer charged by reason of his or her corporate office while performing that duty. *United States v. Sancelmar Industries, Inc.*, 347 F. Supp. 404, 408 (E.D. N.Y. 1972). Accordingly, it has been held by administrative decisions and by the courts that the term "party responsible", as used in section 3(a) of the Act, imposes personal liability for violations of any of the contract stipulations required by sections 2(a)(1) and (2) and 2(b) of the Act on corporate officers who control, or are responsible for control of, the corporate entity, as they, individually, have an obligation to assure compliance with the requirements of the Act, the regulations, and the contracts. See, for example, *Waite, Inc.*, Decision of the ALJ, SCA 530-566, October 19, 1976, *Spruce-Up Corp.*, Decision of the Administrator SCA 368-370, August 19, 1976, *Ventilation and Cleaning Engineers, Inc.*, Decision of the ALJ, SCA 176, August 23, 1973, Assistant Secretary, May 17, 1974, Secretary, September 27, 1974; *Fred Van Elk*, Decision of the ALJ, SCA 254-58, May 28, 1974, Administrator, November 25, 1974; *Murcole, Inc.*, Decision of the ALJ, SCA 195-198, April 11, 1974; *Emile J. Bouchet*, Decision of the ALJ, SCA 38, February 24, 1970; *Darwyn L. Grover*, Decision of the ALJ, SCA 485, August 15, 1976; *United States v. Islip Machine Works, Inc.*, 179 F. Supp. 585 (E.D. N.Y. 1959); *United States v. Sancelmar Industries, Inc.*, 347 F. Supp. 404 (E.D. N.Y. 1972).

(3) In essence, individual liability attaches to the corporate official who is responsible for, and therefore causes or permits, the violation of the contract stipulations required by the Act, i.e., corporate officers who control the day-to-day operations and management policy are personally liable for underpayments because they cause or permit violations of the Act.

(4) It has also been held that the personal responsibility and liability of individuals for violations of the Act is not limited to the officers of a contracting firm or to signatories to the Government contract who are bound by and accept responsibility for compliance with the Act and imposition of its sanctions set forth in the contract clauses in § 4.6, but includes all persons, irrespective of proprietary interest, who exercise control, supervision, or management over the performance of the contract, including the labor policy or employment conditions regarding the employees engaged in contract performance, and who, by action or inaction, cause or permit a contract to

be breached. *U.S. v. Islip Machine Works, Inc.*, 179 F. Supp. 585 (E.D. N.Y. 1959); *U.S. v. Sancelmar Industries, Inc.*, 347 F. Supp. 404 (E.D. N.Y. 1972); *Oscar Hestrom Corp.*, Decision of the Administrator, PC-257, May 7, 1946, affirmed, *U.S. v. Hedstrom*, 8 Wage Hour Cases 302 (N.D. Ill. 1948); *Craddock-Terry Shoe Corp.*, Decision of the Administrator, PC-330, October 3, 1947; *Reynolds Research Corp.*, Decision of the Administrator, PC-381, October 24, 1951; *Etowah Garment Co., Inc.*, Decision of the Hearing Examiner, PC-632, August 9, 1957, Decision of the Administrator, April 29, 1958; *Cardinal Fuel and Supply Co.*, Decision of the Hearing Examiner, PC-890, June 17, 1963.

(5) Reliance on advice from contracting agency officials (or Department of Labor officials without the authority to issue rulings under the Act) is not a defense against a contractor's liability for back wages under the Act. *Standard Fabrication Ltd.*, Decision of the Secretary, PC-297, August 3, 1948; *Airport Machining Corp.*, Decision of the ALJ, PC-1177, June 15, 1973; *James D. West*, Decision of the ALJ, SCA 397-398, November 17, 1975; *Metropolitan Rehabilitation Corp.*, WAB Case No. 78-25, August 2, 1979; *Fry Brothers Corp.*, WAB Case No. 76-6, June 14, 1977.

(f) The appellate rights of a contractor or subcontractor regarding violations of the Act, including back wage liability or the disposition of funds withheld by the agency for such liability are contained in Part 6 of this Title. Appeals in such matters have not been delegated to the contracting agencies and such matters cannot be appealed under the disputes clause in the contractor's contract.

(g) While the Act provides that action may be brought against a surety to recover underpayments of compensation, there is no statutory provision requiring that contractors furnish either payment or performance bonds before an award can be made. The courts have held, however, that when such a bond has been given, including one denominated as a performance rather than payment bond, and such a bond guarantees that the principal shall fulfill "all the undertakings, covenants, terms, conditions, and agreements" of the contract, or similar words to the same effect, the surety-guarantor is jointly liable for underpayments by the contractor of the wages and fringe benefits required by the Act up to the amount of the bond. *U.S. v. Powers Building Maintenance Co.*, 366 F. Supp. 819 (W.D. Okla. 1972); *U.S. v. Gillespie*,



72 CCH Labor Cases ¶ 33,986 (C.D. Cal. 1973) *U.S. v. Glens Falls Insurance Co.*, 279 F. Supp. 236 (E.D. Tenn. 1967); *United States v. Hudgins-Dize Co.*, 83 F. Supp. 593 (E.D. Va. 1949); *U.S. v. Continental Casualty Company*, 85 F. Supp. 573 (E.D. Pa. 1949), affirmed per curiam, 182 F.2d 941 (3rd Cir. 1950).

**§ 4.188 Ineligibility for further contracts when violations occur.**

(a) Section 5 of the Act directs the Comptroller General to distribute a list to all agencies of the Government giving the names of persons or firms that the Federal agencies or the Secretary has found violated this Act. Unless the Secretary otherwise recommends because of unusual circumstances, no contract of the United States or the District of Columbia (whether or not subject to the Act) shall be awarded to the persons or firms appearing on this list or to any firm, corporation, partnership, or association in which such persons or firms have a substantial interest until 3 years have elapsed from the date of publication of the list containing the names of such persons or firms. This prohibition against the award of a contract to an ineligible contractor applies to the contractor in its capacity as either a prime contractor or a subcontractor. Because the Act contains no provision authorizing removal from the list of the names of such persons or firms prior to the expiration of the three-year statutory period, the Secretary is without authority to accomplish such removal (other than in situations involving mistake or legal error). On the other hand, there may be situations in which persons or firms already on the list are found in a subsequent administrative proceeding to have again violated the Act and their debarment ordered. In such circumstances, a new, three-year debarment term will commence with the republication of such names on the list.

(b)(1) The term "unusual circumstances" is not defined in the Act. Accordingly, the determination must be made on a case-by-case basis in accordance with the particular facts present. It is clear, however, that the effect of the 1972 Amendments is to limit the Secretary's discretion to relieve violators from the debarred list (H. Rept. 92-1251, 92d Cong., 2d Sess. 5; S. Rept. 92-1131, 92d Cong., 2d Sess. 3-4) and that the violator of the Act has the burden of establishing the existence of unusual circumstances to warrant relief from the debarment sanction. *Ventilation and Cleaning Engineers, Inc.*, SCA-176, Administrative Law Judge, August 23, 1973, Assistant Secretary, May 22, 1974, Secretary,

October 2, 1974. It is also clear that unusual circumstances do not include any circumstances which would have been insufficient to relieve a contractor from the ineligible list prior to the 1972 amendments, or those circumstances which commonly exist in cases where violations are found, such as negligent or willful disregard of the contract requirements and of the Act and regulations, including a contractor's plea of ignorance of the Act's requirements where the obligation to comply with the Act is plain from the contract, failure to keep necessary records and the like. *Emerald Maintenance Inc.*, Supplemental Decision of the ALJ, SCA-153, April 5, 1973.

(2) The Subcommittee report following the oversight hearings conducted just prior to the 1972 amendments makes it plain that the limitation of the Secretary's discretion through the unusual circumstances language was designed in part to prevent the Secretary from relieving a contractor from the ineligible list provisions merely because the contractor paid what he was required by his contract to pay in the first place and promised to comply with the Act in the future. See, House Committee on Education and Labor, Special Subcommittee on Labor, The Plight of Service Workers under Government Contracts 12-13 (Comm. Print 1971). As Congressman O'Hara stated: "Restoration \* \* \* [of wages and benefits] is not in and of itself a penalty. The penalty for violation is the suspension from the right to bid on Government contracts \* \* \*. The authority [to relieve from blacklisting] was intended to be used in situations where the violation was a minor one, or an inadvertent one, or one in which disbarment \* \* \* would have been wholly disproportionate to the offense." House Committee on Education and Labor, Special Subcommittee on Labor, Hearings on H.R. 6244 and H.R. 6245, 92d Cong., 1st Sess. 3 (1971).

(3)(i) The Department of Labor has developed criteria for determining when there are unusual circumstances within the meaning of the Act. See, e.g., *Washington Moving & Storage Co.*, Decision of the Assistant Secretary, SCA 68, August 16, 1973, Secretary, March 12, 1974; *Quality Maintenance Co.*, Decision of the Assistant Secretary, SCA 119, January 11, 1974. Thus, where the respondent's conduct in causing or permitting violations of the Service Contract Act provisions of the contract is willful, deliberate or of an aggravated nature or where the violations are a result of culpable conduct such as culpable neglect to ascertain whether

practices are in violation, culpable disregard of whether they were in violation or not, or culpable failure to comply with recordkeeping requirements (such as falsification of records), relief from the debarment sanction cannot be in order. Furthermore, relief from debarment cannot be in order where a contractor has a history of similar violations, where a contractor has repeatedly violated the provisions of the Act, or where previous violations were serious in nature.

(ii) A good compliance history, cooperation in the investigation, repayment of moneys due, and sufficient assurances of future compliance are generally prerequisites to relief. Where these prerequisites are present and none of the aggravated circumstances in the preceding paragraph exist, a variety of factors must still be considered, including whether the contractor has previously been investigated for violations of the Act, whether the contractor has committed recordkeeping violations which impeded the investigation, whether liability was dependent upon resolution of a bona fide legal issue of doubtful certainty, the contractor's efforts to ensure compliance, the nature, extent, and seriousness of any past or present violations, including the impact of violations on unpaid employees, and whether the sums due were promptly paid.

(4) A contractor has an affirmative obligation to ensure that its pay practices are in compliance with the Act, and cannot itself resolve questions which arise, but rather must seek advice from the Department of Labor. *Murcole, Inc.*, Decision of the ALJ, SCA 195-198, April 10, 1974; *McLaughlin Storage, Inc.*, Decision of the ALJ, SCA 362-365, November 5, 1975, Administrator, March 25, 1976; *Able Building & Maintenance & Service Co.*, Decision of the ALJ, SCA 389-390, May 29, 1975, Assistant Secretary, January 13, 1976; *Aarid Van Lines, Inc.*, Decision of the Administrator, SCA 423-425, May 13, 1977.

(5) Furthermore, a contractor cannot be relieved from debarment by attempting to shift his/her responsibility to subordinate employees. *Security Systems, Inc.*, Decision of the ALJ, SCA 774-775, April 10, 1978; *Ventilation & Cleaning Engineers, Inc.*, Decision of the Secretary, SCA 176, September 27, 1974; *Ernest Roman*, Decision of the Secretary, SCA 275, May 6, 1977. As the Comptroller General has stated in considering debarment under the Davis-Bacon Act, "[n]egligence of the



employer to instruct his employees as to the proper method of performing his work or to see that the employee obeys his instructions renders the employer liable for injuries to third parties resulting therefrom. \* \* \* The employer will be liable for acts of his employee within the scope of the employment regardless of whether the acts were expressly or impliedly authorized. \* \* \* Willful and malicious acts of the employee are imputable to the employer under the doctrine of respondeat superior although they might not have been consented to or expressly authorized or ratified by the employer." (Decision of the Comptroller General, B-145608, August 1, 1961.)

(6) Negligence per se does not constitute unusual circumstances. Relief on no basis other than negligence would render the effect of section 5(a) a nullity, since it was intended that only responsible bidders be awarded Government contracts. *Greenwood's Transfer & Storage, Inc.*, Decision of the Secretary, SCA 321-326, June 1, 1976; *Ventilation & Cleaning Engineers, Inc.*, Decision of the Secretary, SCA 176, September 27, 1974.

(c) Similarly, the term "substantial interest" is not defined in the Act. Accordingly, this determination, too, must be made on a case-by-case basis in light of the particular facts, and cognizant of the legislative intent "to provide to service employees safeguards similar to those given to employees covered by the Walsh-Healey Public Contracts Act". *Federal Food Services, Inc.*, Decision of the ALJ, SCA 585-592, November 22, 1977. Thus, guidance can be obtained from cases arising under the Walsh-Healey Act, which uses the concept "controlling interest". See *Regal Mfg. Co.*, Decision of the Administrator, PC-245, March 1, 1946; *Acme Sportswear Co.*, Decision of the Hearing Examiner, PC-275, May 8, 1946; *Gearcraft, Inc.*, Decision of the ALJ, PCX-1, May 3, 1972. In a supplemental decision of February 23, 1979, in *Federal Food Services, Inc.* the Judge ruled as a matter of law that the term "does not preclude every employment or financial relationship between a party under sanction and another \* \* \* [and that] it is necessary to look behind titles, payments, and arrangements and examine the existing circumstances before reaching a conclusion in this matter."

(1) Where a person or firm has a direct or beneficial ownership or control of more than 5 percent of any firm, corporation, partnership, or association, a "substantial interest" will be deemed to exist. Similarly, where a person is an

officer or director in a firm or the debarred firm shares common management with another firm, a "substantial interest" will be deemed to exist. Furthermore, wherever a firm is an affiliate as defined in § 4.1a(g) of Subpart A, a "substantial interest" will be deemed to exist, or where a debarred person forms or participates in another firm in which he/she has comparable authority, he/she will be deemed to have a "substantial interest" in the new firm and such new firm would also be debarred (*Etowah Garment Co., Inc.*, Decision of the Hearing Examiner, PC-632, August 9, 1957).

(2) Nor is interest determined by ownership alone. A debarred person will also be deemed to have a "substantial interest" in a firm if such person has participated in contract negotiations, is a signatory to a contract, or has the authority to establish, control, or manage the contract performance and/or the labor policies of a firm. A "substantial interest" may also be deemed to exist, in other circumstances, after consideration of the facts of the individual case. Factors to be examined include, among others, sharing of common premises or facilities, occupying any position such as manager, supervisor, or consultant to, any such entity, whether compensated on a salary, bonus, fee, dividend, profit-sharing, or other basis of remuneration, including indirect compensation by virtue of family relationships or otherwise. A firm will be particularly closely examined where there has been an attempt to sever an association with a debarred firm or where the firm was formed by a person previously affiliated with the debarred firm or a relative of the debarred person.

(3) Firms with such identity of interest with a debarred person or firm will be placed on the debarred bidders list after the determination is made pursuant to procedures in Part 6, Subpart A, or § 4.12 and Part 6, Subpart D. Where a determination of such "substantial interest" is made after the initiation of the debarment period, contracting agencies are to terminate any contract with such firm entered into after the initiation of the original debarment period since all persons or firms in which the debarred person or firm has a substantial interest are also ineligible to receive Government contracts.

#### § 4.189 Administrative proceedings relating to enforcement of labor standards.

The Secretary is authorized pursuant to the provisions of section 4(a) of the Act to hold hearings and make decisions based upon findings of fact as are deemed to be necessary to enforce the

provisions of the Act. Pursuant to section 4(a) of the Act, the Secretary's findings of fact after notice and hearing are conclusive upon all agencies of the United States and, if supported by the preponderance of the evidence, conclusive in any court of the United States, without a trial de novo. *United States v. Powers Building Maintenance Co.*, 336 F. Supp. 819 (W.D. Okla. 1972). Rules of practice for administrative proceedings are set forth in Part 6 of this Title.

#### § 4.190 Contract cancellation.

(a) As provided in section 3 of the Act, where a violation is found of any contract stipulation, the contract is subject upon written notice to cancellation by the contracting agency, whereupon the United States may enter into other contracts or arrangements for the completion of the original contract, charging any additional cost to the original contractor.

(b) Every contractor shall certify pursuant to § 4.6(n) of Subpart A that it is not disqualified for the award of a contract by virtue of its name appearing on the debarred bidders list or because any such currently listed person or firm has a substantial interest in said contractor, as described in § 4.188. Upon discovery of such false certification or determination of substantial interest in a firm performing on a Government contract, as the case may be, the contract is similarly subject upon written notice to immediate cancellation by the contracting agency and any additional cost for the completion of the contract charged to the original contractor as specified in paragraph (a), *supra*. Such contract is without warrant of law and has no force and effect and is void ab initio, 33 Comp Gen. 63; Decision of the Comptroller General, B-115051, August 6, 1953. Furthermore, any profit derived from said illegal contract is forfeited (*Paisner v. U.S.*, 138 Ct. Cl. 420, 150 F. Supp. 835 (1957), cert. denied, 355 U.S. 941.)

#### § 4.191 Complaints and compliance assistance.

(a) Any employer, employee, labor or trade organization contracting agency, or other interested person or organization may report to any office of the Wage and Hour Division (or to any office of the Occupational Safety and Health Administration, in instances involving the safety and health provisions), a violation, or apparent violation, of the Act, or of any of the rules or regulations prescribed thereunder. Such offices are also available to assist or provide



information to contractors or subcontractors desiring to insure that their practices are in compliance with the Act. Information furnished is treated confidentially. It is the policy of the Department of Labor to protect the identity of its confidential sources and to prevent an unwarranted invasion of personal privacy. Accordingly, the identity of an employee who makes a confidential written or oral statement as a complaint or in the course of an investigation, as well as portions of the statement which would reveal his identity, will not be disclosed without the prior consent of the employee. Disclosure of employee statements shall be governed by the provisions of the "Freedom of Information Act" (5 U.S.C. 552, see 29 CFR Part 70) and the "Privacy Act of 1974" (5 U.S.C. 552a).

(b) A report of breach or violation relating solely to safety and health requirements may be in writing and

addressed to the Regional Administrator of an Occupational Safety and Health Administration Regional Office, U.S. Department of Labor, or to the Assistant Secretary for Occupational Safety and Health, U.S. Department of Labor, Washington, D.C. 20210.

(c) Any other report of breach or violation may be in writing and addressed to the Assistant Regional Administrator of a Wage and Hour Division's regional office, U.S. Department of Labor, or to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, D.C. 20210.

(d) In the event that an Assistant Regional Administrator for the Wage and Hour Division, Employment Standards Administration, is notified of a breach or violation which also involves safety and health standards, the Regional Administrator of the Employment Standards Administration

shall notify the appropriate Regional Administrator of the Occupational Safety and Health Administration who shall with respect to the safety and health violation take action commensurate with his responsibilities pertaining to safety and health standards.

(e) Any report should contain the following:

(1) The full name and address of the person or organization reporting the breach or violations.

(2) The full name and address of the person against whom the report is made.

(3) A clear and concise statement of the facts constituting the alleged breach or violation of any of the provisions of the McNamara-O'Hara Service Contract Act, or of any of the rules or regulations prescribed thereunder.

[FR Doc. 81-23495 Filed 8-13-81; 8:45 am]

BILLING CODE 4510-27-M



# **federal register**

---

**Friday  
August 14, 1981**

---

## **Part V**

## **Department of Labor**

---

### **Office of the Secretary**

---

**Rules of Practice for Administrative  
Proceedings Enforcing Labor Standards  
in Federal and Federally Assisted  
Construction Contracts and Federal  
Service Contracts**



## DEPARTMENT OF LABOR

## Office of the Secretary

## 29 CFR Part 6

## Rules of Practice for Administrative Proceedings Enforcing Labor Standards in Federal and Federally Assisted Construction Contracts and Federal Service Contracts

**AGENCY:** Office of the Secretary, Labor.  
**ACTION:** Proposed rule.

**SUMMARY:** This document is a proposal resulting from the Administration's reexamination of the regulations under the Davis-Bacon and Related Acts, the Service Contract Act, and the Contract Work Hours and Safety Standards Act. This proposal, which is in large part the same as the final rule published on January 16, 1981 (46 FR 4398), is intended to provide for administrative proceedings in enforcement matters and questions of substantial interest under the Davis-Bacon and related acts, the Service Contract Act, and the Contract Work Hours and Safety Standards Act, and substantial variance and arm's length proceedings under Section 4(c) of the Service Contract Act. These revisions are designed to make such proceedings as uniform as possible. A procedure for appeal to a Board of Service Contract Appeals for issues arising under the Service Contract Act is proposed in a separate 29 CFR Part 8.

**DATES:** Comments (three copies) must be received on or before October 13, 1981.

**ADDRESS:** Send comments to Alvin Bramow, Deputy Associate Solicitor, General Legal Services, Office of the Solicitor, Department of Labor, Room N2464, Frances Perkins Department of Labor Building, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

**FOR FURTHER INFORMATION CONTACT:** Gail V. Coleman, Counsel for Contract Labor Standards, General Legal Services, Office of the Solicitor, Department of Labor, Room N2464, Frances Perkins Department of Labor Building, 200 Constitution Avenue, N.W., Washington, D.C. 20210, Phone 523-8268.

**SUPPLEMENTARY INFORMATION:** On April 22, 1980, a proposal was published in the Federal Register (45 FR 27400) to make revisions to 29 CFR Part 6, Rules of Practice for Administrative Proceedings Enforcing Labor Standards in Federal and Federally Assisted Construction Contracts and Federal Service Contracts. As stated in the proposal, its purpose was primarily to make more uniform the proceedings for enforcement under the various labor standards

statutes and to provide more expedited hearings under Section 4(c) of the Service Contract Act.

Interested persons were afforded the opportunity to submit comments to the Office of the Solicitor by May 27, 1980. Comments were received from eight interest parties.

On January 16, 1981, the regulation was published in the Federal Register (46 FR 4398) as a final rule with a scheduled effective date of February 17, 1981. However, pursuant to the President's Memorandum of January 29, 1981, the Department published notices on February 6, 1981 (46 FR 11253), and thereafter, delaying implementation of this regulation until August 15, 1981, in order to reconsider the rule pursuant to Executive Order 12291. See 46 FR 18973 (March 27, 1981); 46 FR 23739 (April 28, 1981); 46 FR 33514 (June 30, 1981); 46 FR 36140 (July 14, 1981). By separate document, the effective date of the regulation published on January 16, 1981, is being postponed until action is taken on this proposal.

On January 16 and 19, 1981, the Department also published final rules under the Davis-Bacon and Related Acts, including the Contract Work Hours and Safety Standards Act (29 CFR Parts 1 and 5; 46 FR 4306 and 4380), and the Service Contract Act (29 CFR Part 4; 46 FR 4320 and 4886). However, these rules were also delayed pursuant to the President's memorandum in order to fully reconsider the rules as required by Executive Order 12291.

During this period, the Department conducted a thorough review of these regulations which has led to significant new proposals which are being published in the Federal Register. The effective dates of the regulations published in January 1981 are being postponed until action is taken on these proposals.

Because this regulation, Part 6, is integrally related to the regulations at Parts 4 and 5, which provide procedures for referral of cases to administrative law judges for hearings under Part 6, the Department is publishing this rule as a proposal for comments. In most respects, this proposal is not significantly different from the final rule which was published on January 16, 1981 at 46 FR 4398 and subsequently delayed. The following revisions are proposed:

Subpart F, *Appeals from Decisions under the Service Contract Act*, would be deleted. A separate proposal in 29 CFR Part 8 would provide for appeals to a Board of Service Contract Appeals instead of appeals to the Secretary.

Corresponding changes would be

made in §§ 6.12, 6.14, 6.23, 6.24, 6.25, 6.26, 6.43, 6.44, 6.45, 6.46, 6.56 and 6.57 to substitute "the Board" for "the Secretary" in all references to appeal procedures.

A minor editorial change would also be made in § 6.6(d).

## Classification

The proposed rule is procedural in character. Therefore, this rule is not classified as a "major rule" under Executive Order 12291 on Federal Regulations, because it is not likely to result in (1) an annual effect on the economy of \$100 million or more; (2) a major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, no regulatory impact analysis is required.

The Department believes that the proposed rule will have no "significant economic impact" \* \* \* upon a substantial number of \* \* \* small [business] entities" within the meaning of § 3(a) of the Regulatory Flexibility Act, Pub. L. No. 96-354, 91 Stat. 1164 (to be codified at 5 U.S.C. 605(b)). The Secretary has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect. This conclusion is reached because the proposed rule is procedural in character. Accordingly, no initial regulatory flexibility analysis is required.

## Regulatory Flexibility Act Certification

I, Raymond J. Donovan, Secretary of Labor, hereby certify, pursuant to 5 U.S.C. 605(b), that the proposed rule contained in 29 CFR Part 6, concerning rules of administrative practice, will not have a significant economic impact on a substantial number of small entities. This conclusion is based upon the fact that this rule is procedural in character.

Signed at Washington, D.C. this 10th day of August 1981.

Raymond J. Donovan,  
 Secretary of Labor.

Accordingly, it is proposed to revise Part 6 of Title 29 of the Code of Federal Regulations as set forth below:

Signed at Washington, D.C. on this 10th day of August 1981.

Raymond J. Donovan,  
 Secretary of Labor.



# **PART 6—RULES OF PRACTICE FOR ADMINISTRATIVE PROCEEDINGS ENFORCING LABOR STANDARDS IN FEDERAL AND FEDERALLY ASSISTED CONSTRUCTION CONTRACTS AND FEDERAL SERVICE CONTRACTS**

## **Subpart A—General**

- Sec.
- 6.1 Applicability of rules.
  - 6.2 Definitions.
  - 6.3 Service; copies of documents and pleadings.
  - 6.4 Computation of time.
  - 6.5 Motions and requests.
  - 6.6 Depositions.
  - 6.7 Subpoenas.
  - 6.8 Production of documents and witnesses.
  - 6.9 Witnesses and fees.
  - 6.10 Administrative law judge.
  - 6.11 Prehearing conference.
  - 6.12 Appearances.
  - 6.13 Hearing.
  - 6.14 Transmission of record.

## **Subpart B—Enforcement Proceedings Under the Service Contract Act (and Under the Contract Work Hours and Safety Standards Act for Contracts Subject to the Service Contract Act)**

- 6.20 Complaints.
- 6.21 Answer.
- 6.22 Amendments to pleadings.
- 6.23 Consent findings and order.
- 6.24 Decision of the administrative law judge.
- 6.25 Petition for review.
- 6.26 Ineligible list.

## **Subpart C—Enforcement Proceedings Under the Davis-Bacon Act and Related Prevailing Wage Statutes, the Copeland Act, and the Contract Work Hours and Safety Standards Act (Except Under Contracts Subject to the Service Contract Act)**

- 6.30 Referral to chief administrative law judge.
- 6.31 Amendments to pleadings.
- 6.32 Consent findings and order.
- 6.33 Decision of the administrative law judge.
- 6.34 Petition for review.
- 6.35 Ineligible list.

## **Subpart D—Substantial Interest Proceedings**

- 6.40 Scope.
- 6.41 Referral to chief administrative law judge.
- 6.42 Amendments to pleadings.
- 6.43 Consent findings and order.
- 6.44 Decision of the administrative law judge.
- 6.45 Petition for review.
- 6.46 Ineligible list.

## **Subpart E—Substantial Variance and Arm's-Length Proceedings**

- 6.50 Scope.
- 6.51 Referral to chief administrative law judge.
- 6.52 Appointment of administrative law judge and notification of prehearing conference and hearing date.

- Sec.
- 6.53 Prehearing conference.
- 6.54 Hearing.
- 6.55 Closing of record.
- 6.56 Decision of the administrative law judge.
- 6.57 Petition for review.

Authority: Secs. 4 and 5, 79 Stat. 1034, 1035 as amended by 86 Stat. 789, 790, 41 U.S.C. 353 and 354; 5 U.S.C. 301; Reorg. Plan No. 14 of 1950, 64 Stat. 1267, 5 U.S.C. Appendix; 46 Stat. 1494, as amended by 49 Stat. 1011, 78 Stat. 238, 40 U.S.C. 276a-276a-7; 76 Stat. 357-359, 40 U.S.C. 327-332; 48 Stat. 948, as amended by 63 Stat. 108, 72 Stat. 967, 40 U.S.C. 276c.

## **Subpart A—General**

### **§ 6.1 Applicability of rules.**

This part provides the rules of practice for administrative proceedings under the Service Contract Act, the Davis-Bacon Act and related statutes listed in § 5.1 of Part 5 of this title which require payment of wages determined in accordance with the Davis-Bacon Act, the Contract Work Hours and Safety Standards Act, and the Copeland Act. See Parts 4 and 5 of this title.

### **§ 6.2 Definitions.**

(a) "Administrator" means the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, or authorized representative.

(b) "Associate Solicitor" means the Associate Solicitor for General Legal Services, Office of the Solicitor, U.S. Department of Labor, Washington, D.C. 20210.

(c) "Chief Administrative Law Judge" means the Chief Administrative Law Judge, U.S. Department of Labor, 1111 20th Street, N.W., Suite 700, Washington, D.C. 20036.

(d) "Respondent" means the contractor, subcontractor, person alleged to be responsible under the contract or subcontract, and/or any firm, corporation, partnership, or association in which such person or firm is alleged to have a substantial interest (or interest if the proceeding is under the Davis-Bacon Act) against whom the proceedings are brought.

### **§ 6.3 Service; copies of documents and pleadings.**

(a) *Manner of service.* Service upon any party shall be made by the party filing the pleading or document by delivering a copy or mailing a copy to the last known address. When a party is represented by an attorney, the service should be upon the attorney. For purposes of this part, filing is accomplished upon the day of service, by mail or otherwise.

(b) *Proof of service.* A certificate of

the person serving the pleading or other document by personal delivery or by mailing, setting forth the manner of said service shall be proof of the service. Where service is made by mail, service shall be complete upon mailing.

(c) *Service upon Department, number of copies of pleading or other documents.* An original and three copies of all pleadings and other documents shall be filed with the Department of Labor. The original and one copy with the Administrative Law Judge before whom the case is pending, one copy with the attorney representing the Department during the hearing, and one copy with the Associate Solicitor.

### **§ 6.4 Computation of time.**

Saturdays, Sundays, and holidays shall be included in computing the time allowed for filing any document or paper under this part, but when such time expires on such a day, such period shall be extended to include the next following day which is not a Saturday, Sunday or holiday.

### **§ 6.5 Motions and requests.**

Motions or requests on any matter, including discovery, shall be filed with the Chief Administrative Law Judge, except that those made during the course of the hearing shall be filed with the Administrative Law Judge or shall be stated orally and made part of the transcript. Each motion or request shall state the particular order, ruling, or action desired, and the grounds therefor. The Administrative Law Judge is authorized to rule upon all motions or requests filed or made prior to the filing of the decision.

### **§ 6.6 Depositions.**

(a) *When, how, and by whom taken.* For good cause shown, the testimony of any witness may be taken by deposition in any proceeding, after a complaint has been filed. Depositions may be taken upon written interrogatories or orally before any person having power to administer oaths.

(b) *Application.* Any party desiring to take the deposition of a witness shall make application in writing to the Administrative Law Judge, setting forth the reasons why such deposition should be taken; the time when, the place where, and the name and address of the person before whom the deposition is to be taken; the name and address of each witness; and the subject matter concerning which each witness is expected to testify.

(c) *Notice.* Such notice as the Administrative Law Judge shall order



shall be given for the taking of a deposition, but this shall not be less than 5 days' written notice when the deposition is to be taken within the United States and not less than 20 days' written notice when the deposition is to be taken elsewhere.

(d) *Taking and receiving in evidence.* Each witness testifying upon deposition shall be sworn, and, with respect to oral depositions, the adverse party shall have the right to cross-examine. The questions asked and the answers thereto, together with all objections made, shall be reduced to writing, read to and subscribed by the witness, and certified by the officer authorized to administer oaths. Thereafter, the officer shall seal the deposition, with two copies thereof, in an envelope and mail the same by registered mail to the Administrative Law Judge. Subject to such objections to the questions and answers as were noted at the time of taking the deposition and would be valid were the witness personally present and testifying, such deposition may be read and offered in evidence by the party taking it as against any party who was present or represented at the taking of the deposition or who had due notice thereof. No part of a deposition shall be admitted in evidence except for the limited purpose of impeachment, unless there is a showing that the witness is unavailable to testify (including a witness who cannot be subpoenaed or who is located outside of the State in which the hearing is held) or unless the parties stipulate regarding use of the deposition.

#### § 6.7 Subpoenas.

All applications under the Service Contract Act for subpoenas ad testificandum and subpoenas duces tecum shall be made in writing to the Administrative Law Judge. Application for subpoenas duces tecum shall specify as exactly as possible the documents to be produced, showing their general relevancy and reasonable scope.

#### § 6.8 Production of documents and witnesses.

The parties, who shall be deemed to be the Department of Labor and the respondent(s), may serve on any other party a request to produce documents or witnesses in the control of the party served, setting forth with particularity the documents or witnesses requested. The party served shall have 15 days to respond or object thereto unless a shorter or longer time is ordered by the Administrative Law Judge. The parties shall produce documents and witnesses to which no privilege attaches which are in the control of the party, if so ordered

by the Administrative Law Judge upon motion therefor by a party. If a privilege is claimed, it must be specifically claimed in writing prior to the hearing or orally at the hearing, including the reasons therefor. In no event shall a statement taken in confidence by the Department of Labor or other Federal agency be ordered to be produced prior to the date of testimony at trial of the person whose statement is at issue unless the consent of such person has been obtained.

#### § 6.9 Witnesses and fees.

Witnesses subpoenaed by any party shall be paid the same fees and mileage as are paid for like services in the District Court of the United States. The witness fees and mileage shall be paid by the party at whose instance the witnesses appear.

#### § 6.10 Administrative Law Judge.

(a) *Who presides.* All hearings shall be presided over by an Administrative Law Judge appointed under section 11 of the Administrative Procedure Act.

(b) *How assigned.* The presiding Administrative Law Judge shall be designated by the Chief Administrative Law Judge.

(c) *Powers.* Administrative Law Judges shall have all powers necessary to the conduct of fair and impartial hearings, including the following:

- (1) To administer oaths and affirmations;
- (2) To issue subpoenas in proceedings under the Service Contract Act upon proper applications as provided in § 6.7 of this title;
- (3) To rule upon offers of proof and receive relevant evidence;
- (4) To take or cause to be taken depositions and to determine their scope;
- (5) To regulate the course of the hearing and the conduct of the parties and their counsel therein;
- (6) To hold conferences for the settlement or simplification of the issues by consent of the parties;
- (7) To consider and rule upon procedural requests;
- (8) To make and file decisions in conformity with this part;
- (9) To take any action authorized by the rules in this part or in conformance with the Administrative Procedure Act.

(d) *Consultation.* The Administrative Law Judge shall not consult any person or party on any fact in issue unless upon notice and opportunity for all parties to participate.

(e) *Disqualification of Administrative Law Judge.* (1) When an Administrative Law Judge deems himself/herself disqualified to preside in a particular

proceeding, he/she shall withdraw therefrom by notice on the record directed to the Chief Administrative Law Judge.

(2) Whenever any party believes the Administrative Law Judge for any reason to be disqualified to preside, or to continue to preside, in a particular proceeding, that party shall file with the Chief Administrative Law Judge a motion to disqualify and remove such Administrative Law Judge, such motion to be supported by affidavits setting forth the alleged grounds for disqualification. The Chief Administrative Law Judge shall rule upon the motion.

(f) *Contemptuous conduct: failure or refusal of a witness to appear or answer.* Contemptuous conduct at any hearing before an Administrative Law Judge shall be ground for exclusion from the hearing. The failure or refusal of a witness to appear at any hearing when so ordered by the Administrative Law Judge, or to answer any question which has been ruled to be proper, shall be ground for the action provided in section 5 of the Act of June 30, 1936 (41 U.S.C. 39) and, in the discretion of the Administrative Law Judge, for striking out all or part of the testimony which may have been given by such witness.

#### § 6.11 Prehearing conferences.

(a) Upon his/her own motion or the motion of the parties, the Administrative Law Judge may direct the parties or their counsel to meet with the Administrative Law Judge for a conference to consider:

- (1) Simplification of the issues;
- (2) Necessity or desirability of amendments to pleadings for purposes of clarification, simplification, or limitation;
- (3) Stipulations, admissions of fact and contents and authenticity of documents;
- (4) Limitation of the number of expert witnesses; and
- (5) Such other matters as may tend to expedite the disposition of the proceeding.

(b) The record shall show the matters disposed of by order and by agreement in such pretrial conferences. The subsequent course of the proceedings shall be controlled by such action.

#### § 6.12 Appearances.

(a) *Representation.* The parties may appear in person, by counsel, or otherwise.

(b) *Failure to appear.* In the event that a party appears at the hearing and no party appears for the opposing side, the party who is present shall have an election to present evidence in whole or



such portion thereof sufficient to make a prima facie case before the Administrative Law Judge. Failure to appear at a hearing shall not be deemed to be a waiver of the right to be served with a copy of the Administrative Law Judge's decision and to file a petition for review thereof with the Board of Service Contract Appeals or the Wage Appeals Board, as appropriate, *Provided, however*, That no such petition for review may be filed concerning any findings of fact of the Administrative Law Judge or concerning the admissibility of evidence.

#### § 6.13 Hearing.

(a) *Order of proceeding.* Except as may be determined otherwise by the Administrative Law Judge or where the only issue in the proceeding is the existence of unusual circumstances under section 5(a) of the Service Contract Act, counsel for the Department of Labor shall proceed first at the hearing.

(b) *Evidence—(1) In general.* The testimony of witnesses shall be upon oath or affirmation administered by the Administrative Law Judge and shall be subject to such cross-examination as may be required for a full and true disclosure of the facts. The Administrative Law Judge may exclude evidence which is immaterial, irrelevant, or unduly repetitious.

(2) *Objections.* If a party objects to the admission or rejection of any evidence or to the limitation of the scope of any examination or cross-examination or the failure to limit such scope, the party shall state briefly the grounds for such objection. Rulings on all objections shall appear in the record. Only objections made before the Administrative Law Judge may be relied upon subsequently in the proceeding. Formal exception to an adverse ruling is not required.

(c) *Official notice.* Official notice may be taken of any material fact not appearing in evidence in the record, which is among the traditional matters of judicial notice and also concerning which the Department of Labor by reason of its functions is presumed to be expert: *Provided*, That the parties shall be given adequate notice at the hearing or by reference in the Administrative Law Judge's decision of the matters so noticed, and shall be given adequate opportunity to show the contrary.

(d) *Transcript.* A transcript shall be made of the proceeding.

#### § 6.14 Transmission of record.

If a petition for review of the Administrative Law Judge's decision is filed with the Board of Service Contract Appeals or the Wage Appeals Board,

the Chief Administrative Law Judge shall promptly transmit the record of the proceeding. The record shall include: The pleadings, motions, and requests filed in written form, rulings thereon, the transcript of the testimony and proceeding taken at the hearing, together with the exhibits admitted in evidence, and documents or papers filed in connection with prehearing conferences, such proposed findings of fact, conclusions of law, orders, and supporting reasons, as may have been filed, the Administrative Law Judge's decision, and such other documents as may have been filed in the proceeding. If a petition for review is not filed within the time prescribed in this part, the Chief Administrative Law Judge shall so advise the Administrator.

#### Subpart B—Enforcement Proceedings Under the Service Contract Act (and Under the Contract Work Hours and Safety Standards Act for Contracts Subject to the Service Contract Act)

##### § 6.20 Complaints.

(a) Enforcement proceedings under the Service Contract Act and under the Contract Work Hours and Safety Standards Act for contracts subject to the Service Contract Act, may be instituted by the Deputy Solicitor or a Regional Solicitor by issuing a complaint and causing the complaint to be served upon the respondent.

(b) The complaint shall contain a clear and concise factual statement of the grounds for relief and the relief requested.

(c) The Administrative Law Judge shall notify the parties of the time and place for a hearing.

##### § 6.21 Answer.

(a) Within 20 days after the service of the complaint, the respondent shall file an answer with the Chief Administrative Law Judge. The answer shall be signed by the respondent or his/her attorney.

(b) The answer shall (1) contain a statement of the facts which constitute the grounds of defense, and shall specifically admit, explain, or deny, each of the allegations of the complaint unless the respondent is without knowledge, in which case the answer shall so state; or (2) state that the respondent admits all of the allegations of the complaint. The answer may contain a waiver of hearing. Failure to file an answer to or plead specifically to any allegation of the complaint shall constitute an admission of such allegation.

(c) Failure to file an answer shall constitute grounds for waiver of hearing

and entry of a default judgment unless respondent shows good cause for such failure to file. In preparing the decision of default judgment the Administrative Law Judge shall adopt as findings of fact the material facts alleged in the complaint and shall order the appropriate relief and/or sanctions.

##### § 6.22 Amendments to pleadings.

At any time prior to the close of the hearing record, the complaint or answer may be amended with the permission of the Administrative Law Judge and on such terms as he/she may approve. Such amendments shall be allowed when justice and the presentation of the merits are served thereby, provided there is no prejudice to the objecting party's presentation on the merits. A continuance in the hearing may be granted or the record left open to enable the new allegations to be addressed.

##### § 6.23 Consent findings and order.

(a) At any time prior to the receipt of evidence or, at the discretion of the Administrative Law Judge, prior to the issuance of the decision of the Administrative Law Judge, the parties may enter into consent findings and an order disposing of the proceedings in whole or in part.

(b) Any agreement containing consent findings and an order disposing of a proceeding in whole or in part shall also provide:

(1) That the order shall have the same force and effect as an order made after full hearing;

(2) That the entire record on which any order may be based shall consist solely of the complaint and the agreement;

(3) A waiver of any further procedural steps before the Administrative Law Judge and Board of Service Contract Appeals regarding those matters which are the subject of the agreement; and

(4) A waiver of any right to challenge or contest the validity of the findings and order entered into in accordance with the agreement.

(c) Within 30 days after receipt of an agreement containing consent findings and an order disposing of the disputed matter in whole, the Administrative Law Judge shall accept such agreement by issuing a decision based upon the agreed findings and order. If such agreement disposes of only a part of the disputed matter, a hearing shall be conducted on the matters remaining in dispute.



#### § 6.24 Decision of the Administrative Law Judge.

(a) *Proposed findings of fact, conclusions, and order.* Within 30 days of filing of the transcript of the testimony or such additional time as the Administrative Law Judge may allow, each party may file with the Administrative Law Judge proposed findings of fact, conclusions of law, and order, together with a supporting brief expressing the reasons for such proposals. Such proposals and brief shall be served on all parties, and shall refer to all portions of the record and to all authorities relied upon in support of each proposal.

(b) *Decision of the Administrative Law Judge.* (1) Within a reasonable time after the time allowed for the filing of proposed findings of fact, conclusions of law, and order, or within 30 days after receipt of an agreement containing consent findings and order disposing of the disputed matter in whole, the Administrative Law Judge shall make his/her decision. If any aggrieved party desires review of the decision, a petition for review thereof shall be filed as provided in § 6.25 of this title, and such decision and order shall be inoperative unless and until the Board of Service Contract Appeals issues an order affirming the decision. The decision of the Administrative Law Judge shall include findings of fact and conclusions of law, with reasons and bases therefor, upon each material issue of fact, law, or discretion presented on the record. The decision of the Administrative Law Judge shall be based upon a consideration of the whole record, including any admissions made under §§ 6.21, 6.22, and 6.23 of this title. It shall be supported by reliable, probative, and substantial evidence. Such decision shall be in accordance with the regulations and rulings contained in Parts 4 and 5 and other pertinent parts of this title.

(2) If the respondent is found to have violated the Service Contract Act, the Administrative Law Judge shall include in his/her decision an order as to whether the respondent is to be relieved from the ineligible list as provided in Section 5(a) of the Act, and, if relief is ordered, findings of the unusual circumstances, within the meaning of Section 5(a) of the Act, which are the basis therefor. If respondent is found to have violated the provisions of the Contract Work Hours and Safety Standards Act, the Administrative Law Judge shall issue an order as to whether the respondent is to be subject to the ineligible list as provided in § 5.12(a)(1) of Part 5 of this title, including findings

regarding the existence of aggravated or willful violations. If wages and/or fringe benefits are found due under the Service Contract Act and/or the Contract Work Safety Standards Act and are unpaid, no relief from the ineligible list shall be ordered except on condition that such wages and/or fringe benefits are paid.

(3) The Administrative Law Judge shall make no findings regarding liquidated damages under the Contract Work Hours and Safety Standards Act.

#### § 6.25 Petition for review.

Within 40 days after the date of the decision of the Administrative Law Judge (or such additional time as is granted by the Board of Service Contract Appeals), any party aggrieved thereby who desires review thereof shall file a petition for review of the decision with supporting reasons. Such party shall transmit the petition in writing to the Board of Service Contract Appeals pursuant to 29 CFR Part 8, with a copy thereof to the Chief Administrative Law Judge. The petition shall refer to the specific findings of fact, conclusions of law, or order at issue. A petition concerning the decision on the ineligible list shall also state the unusual circumstances or lack thereof under the Service Contract Act, and/or the aggravated or willful violations of the Contract Work Hours and Safety Standards Act or lack thereof, as appropriate.

#### § 6.26 Ineligible list.

(a) Upon the final decision of the Administrative Law Judge or Board of Service Contract Appeals, as appropriate, the Administrator shall promptly forward to the Comptroller General the name of any respondent found in violation of the Service Contract Act, including the name of any firm, corporation, partnership, or association in which the respondent has a substantial interest, unless such decision orders relief from the ineligible list because of unusual circumstances.

(b) Upon the final decision of the Administrative Law Judge or the Board of Service Contract Appeals, as appropriate, the Administrator promptly shall forward to the Comptroller General the name of any respondent found to be in aggravated or willful violation of the Contract Work Hours and Safety Standards Act, and the name of any firm, corporation, partnership, or association in which the respondent has a substantial interest.

#### Subpart C—Enforcement Proceedings Under the Davis-Bacon Act and Related Prevailing Wage Statutes, the Copeland Act, and the Contract Work Hours and Safety Standards Act (Except Under Contracts Subject to the Service Contract Act)

#### § 6.30 Referral to Chief Administrative Law Judge.

(a) Upon timely receipt of a request for a hearing under §§ 5.11 (where the Administrator has determined that relevant facts are in dispute) or 5.12 of Part 5 of this title, the Administrator shall refer the case to the Chief Administrative Law Judge by Order of Reference, to which shall be attached a copy of the notification letter to the respondent from the Administrator and response thereto, for designation of an Administrative Law Judge to conduct such hearings as may be necessary to decide the disputed matters. A copy of the Order of Reference and attachments thereto shall be served upon the respondent.

(b) The notification letter from the Administrator and response thereto shall be given the effect of a complaint and answer, respectively, for purposes of the administrative proceedings. The notification letter and response shall be in accordance with the provisions of § 5.11 or § 5.12(b)(1) of Part 5 of this title, as appropriate.

#### § 6.31 Amendments to pleadings.

At any time prior to the closing of the hearing record, the complaint (notification letter) or answer (response) may be amended with the permission of the Administrative Law Judge and upon such terms as he/she may approve. For proceedings pursuant to § 5.11 of Part 5 of this title, such an amendment may include a statement that debarment action is warranted under § 5.12(a)(1) of Part 5 of this title or under Section 3(a) of the Davis-Bacon Act. Such amendments shall be allowed when justice and the presentation of the merits are served thereby, provided there is no prejudice to the objecting party's presentation on the merits. A continuance in the hearing may be granted or the record left open to enable the new allegations to be addressed.

#### § 6.32 Consent findings and order.

(a) At any time prior to the receipt of evidence or, at the discretion of the Administrative Law Judge, prior to the issuance of the decision of the Administrative Law Judge, the parties may enter into consent findings and an order disposing of the proceeding in whole or in part.



(b) Any agreement containing consent findings and an order disposing of a proceeding in whole or in part shall also provide:

(1) That the order shall have the same force and effect as an order made after full hearing;

(2) That the entire record on which any order may be based shall consist solely of the complaint and the agreement;

(3) That any order concerning debarment under the Davis-Bacon Act (but not under any of the other statutes listed in § 5.1 of Part 5 of this title) shall constitute a recommendation to the Comptroller General;

(4) A waiver of any further procedural steps before the Administrative Law Judge and the Wage Appeals Board regarding those matters which are the subject of the agreement; and

(5) A waiver of any right to challenge or contest the validity of the findings and order entered into in accordance with the agreement.

(c) Within 30 days after receipt of an agreement containing consent findings and an order disposing of the disputed matter in whole, the Administrative Law Judge shall accept such agreement by issuing a decision based upon the agreed findings and order. If such agreement disposes of only a part of the disputed matter, a hearing shall be conducted on the matters remaining in dispute.

#### § 6.33 Decision of the Administrative Law Judge.

(a) *Proposed findings of fact, conclusions, and order.* Within 30 days of filing of the transcript of the testimony or such additional time as the Administrative Law Judge may allow, each party may file with the Administrative Law Judge proposed findings of fact, conclusions of law, and order, together with a supporting brief expressing the reasons for such proposals. Such proposals and brief shall be served on all parties, and shall refer to all portions of the record and to all authorities relied upon in support of each proposal.

(b) *Decision of the Administrative Law Judge.* (1) Within a reasonable time after the time allowed for filing of proposed findings of fact, conclusions of law, and order, or within 30 days of receipt of an agreement containing consent findings and order disposing of the disputed matter in whole, the Administrative Law Judge shall make his/her decision. If any aggrieved party desires review of the decision, a petition for review thereof shall be filed as provided in § 6.34 of this title, and such decision and order shall be inoperative

unless and until the Wage Appeals Board either declines to review the decision or issues an order affirming the decision. The decision of the Administrative Law Judge shall include findings of fact and conclusions of law, with reasons and bases therefor, upon each material issue of fact, law, or discretion presented on the record. Such decision shall be in accordance with the regulations and rulings contained in Part 5 and other pertinent parts of this title. The decision of the Administrative Law Judge shall be based upon a consideration of the whole record, including any admissions made in the respondent's answer (response) and § 6.32 of this title. It shall be supported by reliable, probative, and substantial evidence.

(2) If the respondent is found to have violated the labor standards provisions of any of the statutes listed in § 5.1 of Part 5 of this title other than the Davis-Bacon Act, and if debarment action was requested pursuant to the complaint (notification letter) or any amendment thereto, the Administrative Law Judge shall issue an order as to whether the respondent is to be subject to the ineligible list as provided in § 5.12(a)(1) of this title, including any findings of aggravated or willful violations. If the respondent is found to have violated the Davis-Bacon Act, and if debarment action was requested, the Administrative Law Judge shall issue as a part of the order a recommendation as to whether respondent should be subject to the ineligible list pursuant to Section 3(a) of the Act, including any findings regarding respondent's disregard of obligations to employees and subcontractors. If wages are found due and are unpaid, no relief from the ineligible list shall be ordered or recommended except on condition that such wages are paid.

(3) The Administrative Law Judge shall make no findings regarding liquidated damages under the Contract Work Hours and Safety Standards Act.

#### § 6.34 Petition for review.

Within 40 days after the date of the decision of the Administrative Law Judge (or such additional time as is granted by the Wage Appeals Board), any party aggrieved thereby who desires review thereof shall file a petition for review of the decision with supporting reasons. Such party shall transmit the petition in writing to the Wage Appeals Board, pursuant to Part 7 of this title, with a copy thereof to the Chief Administrative Law Judge. The petition shall refer to the specific findings of fact, conclusions of law, or order at issue. A petition concerning the decision on

debarment shall also state the aggravated or willful violations and/or disregard of obligations to employees and subcontractors, or lack thereof, as appropriate.

#### § 6.35 Ineligible list.

Upon the final decision of the Administrative Law Judge or Wage Appeals Board, as appropriate, regarding violations of any statute listed in § 5.1 of Part 5 of this title other than the Davis-Bacon Act, the Administrator promptly shall forward to the Comptroller General the name of any respondent found to have committed aggravated or willful violations of the labor standards provisions of such statute, and the name of any firm, corporation, partnership, or association in which such respondent has a substantial interest. Upon the final decision of the Administrative Law Judge or Wage Appeals Board, as appropriate, regarding violations of the Davis-Bacon Act, the Administrator promptly shall forward to the Comptroller General any recommendation regarding debarment action against a respondent, and the name of any firm, corporation, partnership, or association in which such respondent has an interest.

#### Subpart D—Substantial Interest Proceedings

##### § 6.40 Scope.

This subpart supplements the procedures contained in § 4.12 of Part 4 and § 5.12(d) of Part 5 of this title, and states the rules of practice applicable to hearings to determine whether persons or firms whose names appear on the ineligible list pursuant to Section 5(a) of the Service Contract Act or § 5.12(a)(1) of Part 5 of this title have a substantial interest in any firm, corporation, partnership, or association other than those listed on the ineligible list; and/or to determine whether persons or firms whose names appear on the ineligible list pursuant to Section 3(a) of the Davis-Bacon Act have an interest in any firm, corporation, partnership, or association other than those listed on the ineligible list.

##### § 6.41 Referral to Chief Administrative Law Judge.

(a) Upon timely receipt of a request for a hearing under § 4.12 of Part 4 or § 5.12 of Part 5 of this title, where the Administrator has determined that relevant facts are in dispute, or on his/her own motion, the Administrator shall refer the case to the Chief Administrative Law Judge by Order of Reference, to which shall be attached a



copy of any findings of the Administrator and response thereto, for designation of an Administrative Law Judge to conduct such hearings as may be necessary to decide the disputed matters. A copy of the Order of Reference and attachments thereto shall be served upon the person or firm requesting the hearing, if any, and upon the respondents.

(b) The findings of the Administrator and response thereto shall be given the effect of a complaint and answer, respectively, for purposes of the administrative proceedings.

#### § 6.42 Amendments to pleadings.

At any time prior to the closing of the hearing record, the complaint (Administrator's findings) or answer (response) may be amended with the permission of the Administrative Law Judge and upon such terms as he/she may approve. Such amendments shall be allowed when justice and the presentation of the merits are served thereby, provided there is no prejudice to the objecting party's presentation on the merits. A continuance in the hearing may be granted or the record left open to enable the new allegations to be addressed.

#### § 6.43 Consent findings and order.

(a) At any time prior to the receipt of evidence or, at the discretion of the Administrative Law Judge, prior to the issuance of the decision of the Administrative Law Judge, the parties may enter into consent findings and an order disposing of the proceeding in whole or in part.

(b) Any agreement containing consent findings and an order disposing of a proceeding in whole or in part shall provide:

(1) That the order shall have the same force and effect as an order made after full hearing;

(2) That the entire record on which any order may be based shall consist solely of the complaint and the agreement;

(3) A waiver of any further procedural steps before the Administrative Law Judge and the Board of Service Contract Appeals or Wage Appeals Board, as appropriate, regarding those matters which are the subject of the agreement; and

(4) A waiver of any right to challenge or contest the validity of the findings and order entered into in accordance with the agreement.

(c) Within 30 days after receipt of an agreement containing consent findings and an order disposing of the disputed matter in whole, the Administrative Law Judge shall accept such agreement by

issuing a decision based upon the agreed findings and order. If such agreement disposes of only a part of the disputed matter, a hearing shall be conducted on the matters remaining in dispute.

#### § 6.44 Decision of the Administrative Law Judge.

(a) *Proposed findings of fact, conclusions, and order.* Within 30 days of filing of the transcript of the testimony, each party may file with the Administrative Law Judge proposed findings of fact, conclusions of law, and order, together with a supporting brief expressing the reasons for such proposals. Such proposals and brief shall be served on all parties, and shall refer to all portions of the record and to all authorities relied upon in support of each proposal.

(b) *Decision of the Administrative Law Judge.* Within 60 days after the time allowed for filing of proposed findings of fact, conclusions of law, and order, or within 30 days after receipt of an agreement containing consent findings and order disposing of the disputed matter in whole, the Administrative Law Judge shall make his/her decision. If any aggrieved party desires review of the decision, a petition for review thereof shall be filed as provided in § 6.45 of this title, and such decision and order shall be inoperative unless and until the Board of Service Contract Appeals or the Wage Appeals Board, as appropriate, issues an order affirming the decision. The decision of the Administrative Law Judge shall include findings of fact and conclusions of law, with reasons and bases therefor, upon each material issue of fact, law, or discretion presented on the record. Such decision shall be in accordance with the regulations and rulings contained in Parts 4 and 5 and other pertinent parts of this title. The decision of the Administrative Law Judge shall be based upon a consideration of the whole record, including any admissions made in the respondents' answer (response) and § 6.43 of this title.

#### § 6.45 Petition for review.

Within 30 days after the date of the decision of the Administrative Law Judge, any party aggrieved thereby who desires review thereof shall file a petition for review of the decision with supporting reasons. Such party shall transmit the petition in writing to the Board of Service Contract Appeals pursuant to 29 CFR Part 8 if the proceeding was under the Service Contract Act, or to the Wage Appeals Board pursuant to 29 CFR Part 7 if the proceeding was under § 5.12(a)(1) of

Part 5 of this title or under Section 3(a) of the Davis-Bacon Act, with a copy thereof to the Chief Administrative Law Judge. The petition for review shall refer to the specific findings of fact, conclusions of law, or order at issue.

#### § 6.46 Ineligible list.

Upon the final decision of the Administrative Law Judge, Board of Service Contract Appeals or Wage Appeals Board, as appropriate, the Administrator promptly shall forward to the Comptroller General the names of any firm, corporation, partnership, or association in which a person or firm debarred pursuant to Section 5(a) of the Service Contract Act or § 5.12(a) of Part 5 of this title has a substantial interest; and/or the name of any firm, corporation, partnership, or association in which a person or firm debarred pursuant to Section 3(a) of the Davis-Bacon Act has an interest.

### Subpart E—Substantial Variance and Arm's-Length Proceedings

#### § 6.50 Scope.

This subpart supplements the procedures contained in §§ 4.10 and 4.11 of Part 4 of this title and states the rules of practice applicable to hearings under Section 4(c) of the Act to determine whether the collectively bargained wages and/or fringe benefits otherwise required to be paid under that section and Sections 2(a)(1) and (2) of the Act are substantially at variance with those which prevail for services of a character similar in the locality, and/or to determine whether the wages and/or fringe benefits provided in the collective bargaining agreement were reached as a result of arm's-length negotiations.

#### § 6.51 Referral to Chief Administrative Law Judge.

(a) Referral pursuant to § 4.10 or § 4.11 of Part 4 of this title will be by an Order of Reference from the Administrator to the Chief Administrative Law Judge, to which will be attached the material submitted by the applicant or any other material the Administrator considers relevant and, for proceedings pursuant to § 4.11 of this title, a copy of any findings of the Administrator. A copy of the Order of Reference and all attachments will be sent by mail to the following parties: the agency whose contract is involved, the parties to the collective bargaining agreement, any contractor or subcontractor performing on the contract, any contractor or subcontractor known to be desirous of bidding thereon or performing services thereunder who is known or believed to be interested in the determination of the



issue, any unions or other authorized representatives of service employees employed or who may be expected to be employed by such contractor or subcontractor on the contract work, and any other affected parties known to be interested in the determination of the issue. The Order of Reference will have attached a certificate of service naming all interested parties who have been served.

(b) Accompanying the Order of Reference and attachments will be a notice advising that any interested party, including the applicant, who intends to participate in the proceeding shall submit a written response to the Chief Administrative Law Judge within 20 days of the date on which the certificate of service indicates the Order of Reference was mailed. The notice will state that such a response shall include:

- (1) A statement of the interested party's case;
- (2) A list of witnesses the interested party will present, a summary of the testimony each is expected to give, and copies of all exhibits proposed to be proffered;
- (3) A list of persons who have knowledge of the facts for whom the interested party requests that subpoenas be issued and a brief statement of the purpose of their testimony; and
- (4) A certificate of service in accordance with § 6.3 of this title on all interested parties, including the Administrator.

#### § 6.52 Appointment of Administrative Law Judge and notification of prehearing conference and hearing date.

Upon receipt from the Administrator of an Order of Reference, notice to the parties, attachments and certificate of service, the Chief Administrative Law Judge shall appoint an Administrative Law Judge to hear the case. The Administrative Law Judge shall promptly notify all interested parties of the time and place of a prehearing conference and of the hearing which shall be held immediately upon the completion of prehearing conference. The date of the prehearing conference and hearing shall be not less than 30 nor more than 40 days from the date on which the certificate of service indicates the Order of Reference was mailed.

#### § 6.53 Prehearing conference.

(a) At the prehearing conference the Administrative Law Judge shall attempt to determine the exact areas of agreement and disagreement raised by the Administrator's Order of Reference and replies thereto, so that the evidence and arguments presented at the hearing will be relevant, complete, and as brief and concise as possible.

(b) Any interested party desiring to file proposed findings of fact and conclusions of law shall submit them to the Administrative Law Judge at the prehearing conference.

(c) If the parties agree that no hearing is necessary to supplement the written evidence and the views and arguments that have been presented, the Administrative Law Judge shall forthwith render his/her final decision. The Administrative Law Judge with the agreement of the parties may permit submission of additional written evidence or argument, such as data accompanied by affidavits attesting to its validity or depositions, within ten days of commencement of the prehearing conference.

#### § 6.54 Hearing.

(a) Except as provided in § 6.53(c) of this title, the hearing shall commence immediately upon the close of the prehearing conference. All matters remaining in controversy, including the presentation of additional evidence, shall be considered at the hearing. There shall be a minimum of formality in the proceeding consistent with orderly procedure.

(b) To expedite the proceeding the Administrative Law Judge shall, after consultation with the parties, set reasonable guidelines and limitations for the presentations to be made at the hearing. The Administrative Law Judge may limit cross-examination and may question witnesses.

(c) Under no circumstances shall source data obtained by the Bureau of Labor Statistics, U.S. Department of Labor, or the names of establishments contacted by the Bureau be submitted into evidence or otherwise disclosed. Where the Bureau has conducted a survey, the published summary of the data may be submitted into evidence.

(d) Affidavits or depositions may be admitted at the discretion of the Administrative Law Judge. The Administrative Law Judge may also

require that unduly repetitious testimony be submitted as affidavits. Such affidavits shall be submitted within three days of the conclusions of the hearing.

(e) Counsel for the Administrator shall participate in the proceeding to the degree he/she deems appropriate.

(f) An expedited transcript shall be made of the hearing and of the prehearing conference.

#### § 6.55 Closing of record.

The Administrative Law Judge shall close the record promptly and not later than 10 days after the date of commencement of the prehearing conference. Post-hearing briefs may be permitted, but the filing of briefs shall not delay issuance of the decision of the Administrative Law Judge pursuant to § 6.56 of this title.

#### § 6.56 Decision of the Administrative Law Judge.

Within 15 days of receipt of the transcript, the Administrative Law Judge shall render his/her decision containing findings of fact and conclusions of law. The decision of the Administrative Law Judge shall be based upon consideration of the whole record, and shall be in accordance with the regulations and rulings contained in Part 4 and other pertinent parts of this title. If any party desires review of the decision, a petition for review thereof shall be filed as provided in § 6.57 of this title, and such decision and order shall be inoperative unless and until the Board of Service Contract Appeals issues an order affirming the decision. If a petition has not been filed within 10 days of issuance of the Administrative Law Judge's decision, the Administrator shall promptly issue any wage determination which may be required as a result of the decision.

#### § 6.57 Petition for review.

Within 10 days after the date of the decision of the Administrative Law Judge, any interested party who participated in the proceedings before the Administrative Law Judge and desires review of the decision shall file a petition for review by the Board of Service Contract Appeals pursuant to 29 CFR Part 8. The petition shall refer to the specific findings of fact, conclusions of law, or order excepted to and the specific pages of transcript relevant to the petition for review.

[FR Doc. 81-23496 Filed 8-13-81; 8:45 am]  
BILLING CODE 4510-23







# **federal register**

---

**Friday  
August 14, 1981**

---

## **Part VI**

## **Department of Labor**

---

### **Office of the Secretary**

---

### **Practice Before the Board of Service Contract Appeals; Proposed Regulations**



## DEPARTMENT OF LABOR

## 29 CFR Part 8

## Practice Before the Board of Service Contract Appeals

AGENCY: Office of the Secretary, Labor.

ACTION: Proposed rule.

**SUMMARY:** A Board of Service Contract Appeals is proposed to hear appeals from decisions of the Wage and Hour Division and appeals from decisions by administrative law judges pursuant to 29 CFR Part 6 involving Service Contract Act matters and related Contract Work Hours and Safety Standards Act matters.

**DATE:** Comments (three copies) must be received on or before October 13, 1981.

**ADDRESS:** Send comments to Alvin Bramow, Deputy Associate Solicitor, General Legal Services, Office of the Solicitor, Department of Labor, Room N2464, Frances Perkins Department of Labor Building, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

**FOR FURTHER INFORMATION CONTACT:** Gail V. Coleman, Counsel for Contract Labor Standards, General Legal Services, Office of the Solicitor, U.S. Department of Labor, Room N2464, 200 Constitution Ave., N.W., Washington, D.C. 20210. Phone 202-523-8268.

**SUPPLEMENTARY INFORMATION:** On April 22, 1980, a proposal was published in the *Federal Register* (45 FR 27410) to make a new Part 8 of Title 29, Code of Federal Regulations, Practice Before the Board of Service Contract Appeals. The purpose of this proposal was to issue procedures concerning a new appellate Board of Service Contract Appeals.

Interested persons were afforded the opportunity to submit comments to the Office of the Solicitor on or before May 27, 1980. Comments were received from 13 interested parties.

On January 19, 1981, proposed Part 8 was withdrawn (46 FR 4951). On January 16, 1981, 29 CFR Part 6 was published as a final rule (46 FR 4398) with a scheduled effective date of February 17, 1981. That regulation contained a new Subpart F providing for appeals to the Secretary on matters arising under the Service Contract Act (and the Contract Work Hours and Safety Standards Act on contracts subject to the Service Contract Act), instead of appeals to a Board. Pursuant to the President's Memorandum of January 29, 1981, the Department published notices on February 6, 1981 (46 FR 11253), and thereafter delaying implementation of the regulation until August 15, 1981 in order to reconsider

the rule pursuant to Executive Order 12291. See 46 FR 18973 (March 27, 1981); 46 FR 23739 (April 20, 1981); 46 FR 33514 (June 30, 1981); 46 FR 36140 (July 14, 1981). The effective date of the regulation has now been postponed while comments are being solicited on a new proposed Part 6.

The procedures in this proposed Part 8 are substantially identical to those published as Subpart F of Part 6 on January 16, 1981, except that appeal is provided to a Board of Service Contract Appeals, rather than to the Secretary. It is envisioned that it would operate in a manner similar to the Wage Appeals Board, which hears appeals under the Davis-Bacon and related acts, and the Department may consolidate the procedures into one Board with jurisdiction to hear all issues under government contract wage statutes.

## Classification

The proposed rule is procedural in character. Therefore, this rule is not classified as a "major rule" under Executive Order 12291 on Federal Regulations, because it is not likely to result in (1) an annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, no regulatory impact analysis is required.

The Department believes that the proposed rule will have no "significant economic impact \* \* \* upon a substantial number of \* \* \* small [business] entities" within the meaning of § 3(a) of the Regulatory Flexibility Act, Pub. L. No. 96-354, 91 Stat. 1164 (to be codified at 5 U.S.C. 605(b)). The Secretary has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect. This conclusion is reached because the proposed rule is procedural in character. Accordingly, no initial regulatory flexibility analysis is required.

## Regulatory Flexibility Act Certification

I, Raymond J. Donovan, Secretary of Labor, hereby certify, pursuant to 5 U.S.C. 605(b), that the proposed rule contained in 29 CFR Part 8, concerning rules of administrative practice, will not have a significant economic impact on a substantial number of small entities. This conclusion is based upon the fact that this rule is procedural in character.

Signed at Washington, D.C. this 10th day of August 1981.

Raymond J. Donovan,  
Secretary of Labor.

Accordingly, it is proposed to issue a new Part 8 to Title 29 of the *Code of Federal Regulations* which will read as set forth below.

Signed at Washington, D.C. on this 10th day of August 1981.

Raymond J. Donovan,  
Secretary of Labor.

## PART 8—PRACTICE BEFORE THE BOARD OF SERVICE CONTRACT APPEALS

## Subpart A—Purpose and Scope

Sec.

## 8.1 Purpose and Scope

## Subpart B—Review of Wage Determinations

8.2 Who may file petitions for review.

8.3 When to file.

8.4 Contents of petitions.

8.5 Filing of wage determination record.

8.6 Disposition by the Board of Service Contract Appeals.

## Subpart C—Review of Other Proceedings and Related Matters

8.7 Review of decisions in other proceedings.

8.8 Filing of administrative record.

8.9 Disposition by the Board of Service Contract Appeals.

## Subpart D—General Procedural Matters

8.10 Filing and service.

8.11 Presentations of other interested persons.

8.12 Intervention; other participation.

8.13 Right to counsel.

8.14 Consolidations.

8.15 Motions; extensions of time.

8.16 Oral proceedings.

8.17 Decision of the Board.

8.18 Public information.

Authority: Secs. 4 and 5, 79 Stat. 1034, 1035, as amended by 86 Stat. 789, 790, 41 U.S.C. 353, 354; 5 U.S.C. 301; Reorg. Plan No. 14 of 1950, 64 Stat. 1267, 5 U.S.C. Appendix; 76 Stat. 357-359, 40 U.S.C. 327-332.

## Subpart A—Purpose and Scope

## § 8.1 Purpose and scope.

(a) This part contains the rules of practice of the Board of Service Contract Appeals (hereinafter referred to as the Board).

(b) The Board has jurisdiction to hear and decide in its discretion appeals concerning questions of law and fact from final decisions of the Administrator of the Wage and Hour Division or authorized representative, and from decisions of Administrative Law Judges under Subparts B, D, and E of Part 6 of this title, arising under the Service



Contract Act and the Contract Work Hours and Safety Standards Act where the contract is also subject to the Service Contract Act. The Board shall not have jurisdiction to pass on the validity of any portion of the Code of Federal Regulations which has been duly promulgated through notice and comment by the Department of Labor and shall observe the provisions thereof, where pertinent, in its decisions. The jurisdiction of the Board includes:

(1) Wage determinations issued under the Service Contract Act;

(2) Substantial variance proceedings or arm's-length negotiations proceedings pursuant to Section 4(c) of the Service Contract Act;

(3) Debarment or other enforcement proceedings;

(4) Proceedings to determine substantial interest of debarred persons or firms;

(5) Decisions of the Wage-Hour Administrator or authorized representative regarding recommendations of a Federal agency for adjustment or waiver of liquidated damages assessed under the Contract Work Hours and Safety Standards Act;

(6) Other final actions of the Wage-Hour Administrator or authorized representative (e.g., additional classification actions and rulings with respect to application of the Act(s), or the regulations, or of wage determinations issued thereunder).

(7) Other matters specifically referred to the Board by the Secretary of Labor.

(c) In considering the matters within the scope of its jurisdiction the Board shall act as the authorized representative of the Secretary of Labor.

(d) The Board is an appellate body. It may remand with appropriate instructions any case for the taking of additional evidence and the making of new or modified findings by reason of the additional evidence.

## Subpart B—Review of Wage Determinations

### § 8.2 Who may file petitions for review.

(a) Any interested party who is seeking a modification or other change in a wage determination under the Service Contract Act and who has requested the Wage-Hour Administrator or authorized representative to make such modification or other change under § 4.55 of Part 4 of this title, and the request has been denied, shall have a right to petition for review of the action taken by that officer.

(b) For purposes of this subpart, the term "interested party" shall mean:

(1) Any employee or any labor organization which represents an

employee who is likely to be employed or to seek employment under a contract containing a particular wage determination, or any contractor or an association representing a contractor who is likely to seek a contract or to work under a contract containing a particular wage determination;

(2) The Federal agency(s) which will administer a proposed contract containing a particular wage determination issued pursuant to the Service Contract Act; and

(3) Any other party whom the Board finds to have a sufficient interest in the wage determination

### § 8.3 When to file.

(a) Requests for review of wage determinations must be filed within 20 days of issuance of the Wage-Hour Administrator's decision denying a request to make a change in the wage determination.

(b) The Board shall under no circumstances request any administering agency to postpone any contract action because of the filing of a petition.

### § 8.4 Contents of petition.

(a) A petition for review of a wage determination shall:

(1) Be in writing and signed by the petitioner or his/her counsel (or other authorized representative);

(2) Be addressed to the Board of Service Contract Appeals;

(3) Identify clearly the wage determination, location where the contract will be performed, if known, and the agency concerned;

(4) State that the petitioner has requested reconsideration of the wage determination in question pursuant to 29 CFR 4.55 and describe briefly the action taken in response to the request;

(5) Contain a short and plain statement of the grounds for review;

(6) Be accompanied by supporting data, views, or arguments; and

(7) Contain a statement that all data or other evidence submitted have previously been submitted to the Administrator.

(b) A petition shall indicate whether or not the petitioner consents to the disposition of the questions involved by a single member of the Board.

### § 8.5 Filing of wage determination record.

The Associate Solicitor for General Legal Services shall, promptly after service of the petition, file with the Board the record upon which the wage determination was based. Under no circumstances shall source data obtained by the Bureau of Labor Statistics, U.S. Department of Labor, or

the names of establishments contacted by the Bureau be filed with the Board or otherwise disclosed. Where the Bureau has conducted a survey, the published summary of the data may be filed.

### § 8.6 Disposition by the Board of Service Contract Appeals.

(a) The Board may decline review of any case whenever in its judgment review would be inappropriate because of lack of timeliness, the nature of the relief sought, the case involves only settled issues of law, or other reasons. A case will be reviewed upon the affirmative vote of one member.

(b) Except as provided in paragraphs (c) and (d) of this section, the Board will not review a wage determination after award, exercise of option, or extension of a contract, unless such procurement action was taken without the wage determination required pursuant to §§ 4.4 and 4.5 of Part 4 of this title.

(c) A wage determination may be reviewed after award, exercise of option, or extension of a contract if it is issued after a finding by an Administrative Law Judge or the Board that a substantial variance exists between collectively bargained wage rates and/or fringe benefits otherwise required to be paid pursuant to Section 4(c) of the Act and those prevailing for services of a character similar in the locality, or after a finding that such collective bargaining agreement was not reached as a result of arm's length negotiations.

(d) Where a petition for review of a wage determination is filed prior to award, exercise of option, or extension of a contract, the Board may review the wage determination after such award, exercise of option, or extension of a contract if the issue is a significant issue of general applicability. The Board's decision shall not affect the contract after such award, exercise of option, or extension.

(e) In issuing its decision the Board will act expeditiously, taking into consideration procurement deadlines. The Board shall decide the case upon the basis of all relevant matters contained in the entire record before it and shall not consider any data not submitted to the Wage-Hour Administrator with the request for reconsideration. The Board in its decision affirming, modifying, or setting aside the wage determination, shall include a statement of reasons or bases for the actions taken. In any remand of a case as provided in § 8.1(e) of this title, the Board shall include appropriate instructions.



### Subpart C—Review of Other Proceedings and Related Matters

#### § 8.7 Review of decisions in other proceedings.

(a) A petition for review of a decision of an Administrative Law Judge pursuant to Subparts B, D or E of Part 6 of this title may be filed by any aggrieved party in accordance with the provisions therein.

(b) A petition for review of a final written decision (other than a wage determination) of the Administrator or authorized representative may be filed by any aggrieved party within 60 days of the date of the decision of which review is sought. Where a case has been referred directly to the Board pursuant to § 4.11 or § 4.12 of this title, no petition for review shall be necessary; a brief in support of the aggrieved party's position shall be filed within 30 days of filing of the administrative record by the Administrator.

(c) The petition shall state concisely the points relied upon, and shall be accompanied by a statement setting forth supporting reasons. The petition shall also indicate whether or not the petitioner consents to the disposition of the questions involved by a single member.

#### § 8.8 Filing of administrative record.

(a) If a petition for review has been filed concerning a decision pursuant to Part 6 of this title, the Chief Administrative Law Judge shall promptly forward the record of the proceeding before the Administrative Law Judge to the Board.

(b) If a petition for review has been filed concerning a final decision of the Wage-Hour Administrator or authorized representative, the Associate Solicitor for General Legal Services shall promptly file with the Board a record upon which the decision was based.

#### § 8.9 Disposition by the Board of Service Contract Appeals.

(a) The Board may decline review of any case whenever in its judgment review would be inappropriate because of lack of timeliness, the nature of the relief sought, the case involves only settled issues of law, or other reasons. A case will be reviewed upon the affirmative vote of one member.

(b) In issuing its decision the Board will take into consideration procurement deadlines where appropriate. The Board shall pass upon the points raised in the petition upon the basis of the entire record before it. The Board may affirm, modify or set aside, in whole or in part, the decision under review and shall issue a decision including a statement of

reasons or bases for the actions taken. The Board shall modify or set aside findings of fact only when it determines that those findings are clearly erroneous. In any remand of a case as provided in § 8.1(e) of this title, the Board shall include any appropriate instructions.

### Subpart D—General Procedural Matters

#### § 8.10 Filing and service.

(a) *Filing.* All papers submitted to the Board under this part shall be filed with the Executive Secretary of the Board of Service Contract Appeals, U.S. Department of Labor, Washington, D.C. 20210.

(b) *Number of copies.* An original and four copies of all papers shall be submitted.

(c) *Manner of service.* Service under this part shall be personal or by mail. Service by mail is complete on mailing. For purposes of this part, filing is accomplished upon the day of service, by mail or otherwise.

(d) *Proof of service.* Papers filed with the Board shall contain an acknowledgement of service by the person served or proof of service in the form of a statement of the date and the manner of service and the names of the person or persons served, certified by the person who made service.

(e) *Service upon the Department of Labor and other interested parties.* A copy of all documents filed with the Board shall be served upon the Associate Solicitor, Division of General Legal Services, U.S. Department of Labor, Washington, D.C. 20210; the Administrator, Wage and Hour Division, U.S. Department of Labor, Washington, D.C. 20210; the Federal contracting agency involved; and all other interested parties.

#### § 8.11 Presentations of other interested persons.

(a) Where a petition has been filed for review of a wage determination or other final decision of the Administrator or authorized representative, the Board shall notify the parties known or believed to be interested in the case. The Associate Solicitor and any other parties interested in presenting their views shall file a statement within 30 days of the filing of the petition (or such other time as is specified by the Board, with consideration of procurement deadlines, as appropriate).

(b) Where a petition has been filed for review of a decision issued pursuant to Subparts B, D or E of Part 6 of this title, any other parties to the proceeding interested in presenting their views shall

file a statement within 30 days of the filing of the petition (or such other time as is specified by the Board, with consideration of procurement deadlines, as appropriate).

#### § 8.12 Intervention; other participation.

For good cause shown, the Board may permit any interested party to intervene or otherwise participate in any proceeding held by the Board. Except when requested orally before the Board, a petition to intervene or otherwise participate shall be in writing (original and four copies) and shall state with precision and particularity:

(a) The petitioner's relationship to the matters involved in the proceedings, and

(b) The nature of the presentation which the petitioner would make.

#### § 8.13 Right to counsel.

Each interested party shall have the right to appear in person or by counsel or other representative in any proceeding before the Board.

#### § 8.14 Consolidations.

Upon its own initiative or upon motion of any interested party, the Board may consolidate any proceeding or concurrently consider two or more appeals which involve substantially the same parties, or issues which are the same or closely related, if it finds that such consolidation or concurrent review will contribute to a proper dispatch of its business and to the ends of justice, and it will not unduly delay consideration of any such appeals.

#### § 8.15 Motions; extensions of time.

(a) Except as otherwise provided in this part, any application for an order or other relief shall be made by motion. Except when made orally before the Board, motions shall be in writing and shall be accompanied by proof of service on all other parties. If a motion is supported by briefs, affidavits, or other papers, they shall be served and filed with the motion. Any party may respond to the motion within such time as may be provided by the Board.

(b) Requests for extension of time as to the filing of papers or oral presentation shall be in the form of a motion under paragraph (a) of this section.

#### § 8.16 Oral proceedings.

(a) With respect to any proceedings before it, the Board may upon its own initiative or upon request of any interested party direct the interested parties to appear before the Board or its designee at a specified time and place in order to simplify the issues presented or to take up any other matters which may



tend to expedite or facilitate the disposition of the proceeding.

(b) In its discretion, the Board or a single presiding member may permit oral argument in any proceeding. The Board or the presiding member shall prescribe the time and place for argument and the time allocated for argument. A petitioner wishing to make oral argument should make the request therefor in the petition.

**§ 8.17 Decision of the Board.**

(a) Unless the petitioner consents to disposition by a single member, decisions of the Board shall be by majority vote.

(b) Where petitioner consents to disposition by a single member, other interested parties shall have an opportunity to oppose such disposition, and such opposition shall be taken into consideration by the Board in determining whether the decision shall be by a single member or majority vote.

**§ 8.18 Public information.**

Subject to the provisions of Part 70 of this title, all papers and documents made a part of the official record in the proceedings of the Board and decisions of the Board shall be made available for public inspection during usual business hours at the Office of the Board of Service Contract Appeals, U.S. Department of Labor, Washington, D.C. 20210.

[FR Doc. 81-23487 Filed 8-13-81; 8:45 am]

BILLING CODE 4510-23-M







# Federal Register

---

Friday  
August 14, 1981

---

## Part VII

## Department of Labor

Wage and Hour Division, Employment  
Standards Administration

---

Procedures for Predetermination of Wage  
Rates



## DEPARTMENT OF LABOR

## Wage and Hour Division, Employment Standards Administration

## 29 CFR Part 1

## Procedures for Predetermination of Wage Rates

**AGENCY:** Wage and Hour Division, Employment Standards Administration, Labor.

**ACTION:** Proposed rule.

**SUMMARY:** This document is a proposal resulting from the Administration's reexamination of the procedures in Part 1 for predetermination of wage rates under the Davis-Bacon and Related Acts. Major changes are proposed to amend the procedure for the determination of prevailing wage rates and the provisions for the issuance of semi-skilled classifications on wage determinations.

**DATE:** Comments (three copies) must be received on or before October 13, 1981.

**ADDRESS:** Submit comments to Mr. William M. Otter, Administrator, Wage and Hour Division, Department of Labor, Room S-3502, 200 Constitution Avenue, NW., Washington, D.C. 20210. Phone: (202) 523-8305.

**FOR FURTHER INFORMATION CONTACT:** Mr. William M. Otter, Administrator, Wage and Hour Division, Department of Labor, Room S-3502, 200 Constitution Avenue, NW., Washington, D.C. 20210. Phone (202) 523-8305.

**SUPPLEMENTARY INFORMATION:** On December 28, 1979, a proposal was published in the *Federal Register* (44 FR 77026) to make certain revisions to 29 CFR Part 1, Procedures for Predetermination of Wage Rates under the Davis-Bacon and Related Acts. As stated in the proposal, its purpose was to reexamine and revise the procedures in Part 1 for predetermination of wage rates under the Davis-Bacon and Related Acts.

Interested persons were afforded the opportunity to submit comments to the Wage and Hour Division on or before March 17, 1980. Subsequently, on February 15 and April 1, 1980, notice was given in the *Federal Register* extending the dates for submission of comments to March 27 and May 27, 1980, respectively.

On January 16, 1981, this regulation was published in the *Federal Register* (46 FR 4306) as a final rule with a scheduled effective date of February 17, 1981. However, pursuant to the President's Memorandum of January 29, 1981, the Department published a notice on February 6, 1981 (46 FR 11253),

delaying implementation of this regulation until March 30, 1981. The Department subsequently delayed the implementation of this regulation until August 15, 1981 in order to fully reconsider the rule as required by Executive Order 12291. See 46 FR 18973 (March 27, 1981); 46 FR 23739 (April 28, 1981); 46 FR 33514 (June 30, 1981); and 46 FR 36140 (July 14, 1981).

During this period, the Department conducted a thorough review of this regulation, which is being postponed by separate document until action is taken on this proposal. The proposed changes to the previously published rule contained in this document are intended to implement the regulatory objective of issuing wage determinations which accurately reflect locally prevailing wages. It has been concluded, in accordance with Executive Order 12291, that the proposed changes are the most cost effective alternative consistent with the purpose of the statute.

The regulations proposed today would not appear to require a regulatory impact analysis under the Executive Order since these changes will result in substantial cost savings annually for both contractors and the government while still assuring protection of local wage rates and practices. Because of the importance to the government and the public of the issues involved, the Department has, nevertheless, concluded that the regulation should be deemed a "major" rule for purposes of Executive Order 12291. The Department's initial regulatory impact analysis and the initial regulatory flexibility analysis assessing the impact of the proposed changes on small entities, as required by the Regulatory Flexibility Act, are summarized after the discussion below of the proposed changes.

It is proposed to modify section 1.2(a) to revise the method of determining "prevailing wages". This section would define the "prevailing rate" as the single rate paid to a majority of workers in a particular classification on similar construction in the locality or the average rate if no single rate is paid to a majority.

This change is proposed because the existing regulation adopting a rate paid to as few as 30 percent of the workers in a classification ignores the rate paid to up to 70 percent of the workers, which may be less (or more) than the 30 percent rate. Likewise, defining the prevailing rate as only the average rate was considered and rejected because the term "prevailing" contemplates the most widely paid rate as a definition of first choice.

Sections 1.3(a) and 1.3(b)(4) would be modified to recognize that although data from Federal and State agencies may be important in individual cases, such agency data are not generally a primary source of information.

The Department is also considering excluding projects subject to Davis-Bacon wage determinations from its surveys, provided that it is feasible to do so. Accordingly, comments are solicited on whether the regulations should be amended to provide for exclusion of Federal projects with attention to the feasibility of differentiating such projects in surveys, the feasibility of determining prevailing wages for categories of construction which are wholly or largely Federally financed if such projects are excluded, and the feasibility of differentiating projects where the contractor would otherwise have paid the wages contained in the wage determination.

Section 1.6(a)(1) would be modified to extend the expiration date of project wage determinations from 120 days to 180 days after issuance to ease the problem of wage determinations expiring after bid opening but before contract award, which frequently necessitates recompetition and substantial delays in prosecution of the project.

Section 1.6(b) would clarify the Department's position that Appendix C, which contains guidelines for the application of wage determinations to projects, is advisory in nature, and that due consideration is to be given to area practice. Corresponding changes were made in Appendix C.

Section 1.6(f) would continue to require the agency to either terminate and resolicit or to incorporate a valid wage determination in the contract after award under the circumstances outlined. However, under this proposal, the requirement that a wage determination be incorporated after contract award would be limited to circumstances where the contractor will receive an appropriate adjustment in compensation if there are any increased costs resulting from incorporation of a valid wage determination. The regulation would further provide that the method of incorporation of the valid wage determination and adjustment in compensation where necessary should not be contrary to procurement regulations and statute.

After carefully reviewing this matter, it was decided that continuation of the requirement for insertion of a correct wage determination was proper under the circumstances outlined in § 1.6(f), namely, where no wage determination



has been included in the contract or where a clearly inapplicable wage determination has been incorporated from the *Federal Register* or issued and applied because DOL was incorrectly advised as to the nature of the project or its location. However, even under these circumstances, the Department believes that it would be inequitable to apply the regulation if the contractor would be harmed because of Government error. Of course, the procuring agencies should not be required to take any action which would be contrary to procurement law.

Section 1.7(b) would be revised to strictly prohibit the use of wage survey data obtained from a metropolitan area in issuing a wage determination for a rural area, and vice versa. This change is being proposed to clarify the Department's position that it is not appropriate to use wage data from demographically dissimilar counties due to the usual disparity between wages traditionally paid in rural areas and metropolitan areas.

Section 1.7(d) is proposed to be revised to allow for the issuance of helper classifications on wage determinations when the classification is identifiable in the locality. Implementation of this proposal would provide recognition of a widespread practice in the construction industry and thus allow wage determinations to reflect actual classification practices and rates. A corresponding change is proposed in Part 5 to permit conformance of helpers where the classification is used in the area.

#### Summary of Preliminary Regulatory Impact and Regulatory Flexibility Analysis

The Department has prepared its preliminary regulatory impact analysis to identify and quantify the cost impact of the proposed changes and various alternatives that were explored and to inform the public of the economic considerations behind these proposed revisions in accordance with Executive Order 12291.

The new proposal must also consider the Regulatory Flexibility Act of 1980. This Act requires agencies to prepare regulatory flexibility analyses and to develop flexible alternatives whenever possible in drafting regulations that will have "a significant economic impact on a substantial number of small entities." The analysis summarized below meets the requirements set forth for assessing the economic impact of the proposed changes in the Davis-Bacon regulations on small entities as required under the Regulatory Flexibility Act.

**A. Definition of "prevailing" rate.** The existing regulations define the

"prevailing" rate as the rate paid to the majority of the employees in a classification; or if there is no majority, the rate paid to the greatest number, provided it constitutes at least 30 percent of the employees in the classification; or if no single rate is paid to at least 30 percent of the employees, the average rate.

The proposed regulation would revise the method of determining Davis-Bacon rates. It would define the "prevailing" rate as the single rate paid to a majority of workers in a particular classification on similar construction in the locality, or the average rate if no single rate is paid to a majority. The Department believes that the proposed definition is most consistent with the "prevailing wage" concept contemplated in the legislation under which rates are designed to mirror, to the extent possible, those customarily paid in appropriate labor markets. If adopted, the proposed elimination of the 30 percent rule is expected to result in substantial cost savings on Government construction contracts amounting to at least \$120 million in fiscal year 1982 alone.

The Department also considered defining the "prevailing" rate as the average in all cases. This alternative was not selected because the term "prevailing" contemplates the most widely paid rate as a definition of first choice.

Several other alternatives were also considered including (1) setting wage determinations at some percentage of the average rate; (2) issuing wage rate determinations as a range of wage rates reflecting the actual distribution of wages in a locality; and (3) allowing procurement agencies to set rates based on—rather than identical to—DOL determinations (the decoupling approach). The Department has carefully considered these options, but concluded that they would not be consistent with the statute's intent.

The DOL methodology estimates the change in wage costs under different decision rules by comparing a large sample of 1,170 Davis-Bacon craft determinations in effect in 1981 with average wage rates for those crafts and localities derived from field surveys conducted by the Employment Standards Administration (ESA). Our sample covered nine crafts and three types of construction (i.e., building, highway and heavy and residential) across all regions of the country.

Because we know the decision rule actually used in setting each Davis-Bacon determination in the sample and the wage rates paid workers in geographic areas, the impact on Davis-Bacon rates of any change in

administrative procedures can be readily determined. For example, to evaluate the percentage change expected in Davis-Bacon rates associated with dropping the 30 percent rule, all determinations in the sample based on this rule were compared with their corresponding average rates to calculate the percent differences in the Davis-Bacon rates. For those determinations based on the majority or average rule, the percent differences were set at zero.

However, many Davis-Bacon determinations are not based on comprehensive wage surveys but rather on collective bargaining agreements or state surveys. Hence, results based solely on the sample will be biased if there is a higher frequency of determinations based on the 30 percent rule in non-surveyed areas. Clearly, average rates cannot be issued without a wage survey; hence, it is likely that Davis-Bacon determinations are implicitly based more frequently on the 30 percent rule in non-surveyed areas.

To adjust our estimates for this possible sample bias, we used both survey data and independent sources to construct estimates of percent differences for all areas lacking surveys. For example, in large urban areas where wage determinations are based on collective bargaining agreements, information on the percentage of workers who are unionized in the area was used to determine the impact of using the majority rule or the average. Where the extent of unionization was sufficiently high, current rates could be expected to prevail even in the absence of the 30 percent rule. We, therefore, assumed that there would be no change in Davis-Bacon rates. Otherwise, we used estimates of percent changes from Davis-Bacon rates to average rates derived from a CEA study of less unionized urban areas.

With estimates in hand for each county, we then summed the percentage differences for each type of construction across all geographic areas (both rural and urban) based on their relative contribution to total public construction activity. This resulted in three separate estimates of the expected percentage change in Davis-Bacon wage rates from adopting different administrative procedures, one for each construction sector.

The final step involves matching these percent changes in wages to estimates of the total labor costs expected to be covered by Davis-Bacon in fiscal year 1982 for each type of construction. We then added up the separate labor cost savings estimates for each construction



sector to form our final estimate of the aggregate wage cost savings from alternative wage determination rules. The preliminary regulatory impact analysis describes the methodology in further detail.

This methodology was used to estimate the cost impact of dropping the 30 percent rule and of using the average rule in all cases. This procedure produced cost savings ranging from \$68 million to \$173 million from eliminating the 30 percent rule. The average cost savings in this range is around \$120 million. The corresponding estimates of cost savings from switching to an average rule in all cases range from \$127 million to \$288 million, with average cost savings set at \$210 million.

This methodology could not be applied to estimate the cost impact of most other alternatives under consideration because of the absence of independent data on which to calculate the differences in wages resulting from these other options for non-surveyed areas. Also, and perhaps more importantly, this methodology measures only the changes in Davis-Bacon rates, not actual changes in wage rates paid on Davis-Bacon projects. The further one moves the Davis-Bacon minimum below the average, the less reflective it is of actual prevailing wages and hence of the real cost savings to be anticipated.

However, we did develop a crude estimate of the potential cost savings from the alternative calling for a range of wages rather than a single rate, for each determination in a locality using our methodology and the results of a CEA study which estimated the net impact of setting minimum wages on Davis-Bacon projects. This estimate is similar to the alternative that establishes a range of wage rates, since the lowest rate in the range effectively becomes the Davis-Bacon minimum. This procedure produced cost savings estimates ranging from \$505.3 million to \$631 million with a midpoint estimate of \$568.2 million for this option.

Much of these cost savings would be passed on to small contractors. The Census Bureau's Economic Census of Construction shows that in 1977 there were 53,665 construction establishments with fewer than 20 employees involved in construction work. These small contractors accounted for about 56 percent of all such construction establishments, but only about 17 percent of employment. While we could use relative employment percentages to distribute the total cost savings from adopting alternative wage determination procedures among large and small contractors, this would be inappropriate since smaller contractors are more likely

to pay wages normally below Davis-Bacon rates, resulting in relatively larger cost savings for small contractors from any lowering in Davis-Bacon rates. Although we can not develop numerical cost estimates, the expected cost savings would be expected to be substantial.

While our approach provides a reasonable approximation of the wage cost savings expected to result from the proposed regulation, it should be stressed that they are only a proxy for actual construction cost differences. Nevertheless, these wage estimates are a useful indicator of the order of magnitude of the lower construction costs that may be expected from the proposed change in the definition of prevailing wages.

**B. Cost Impact of the Expanded Issuance of Semi-Skilled Classifications.** The Department has long permitted exceptions from predetermined Davis-Bacon rates set for a craft classification for apprentices and trainees who are in approved programs. The Department has also recognized a helper classification in some areas under certain well-defined situations where (1) it constitutes a separate and distinct class of workers (i.e., the scope of duties of the helper is defined and can be differentiated from journeyman duties); (2) the particular helper classification prevails in the area; and (3) the helper is not used as an informal apprentice or trainee.

During its review, the Department concluded that the current regulations regarding semi-skilled crafts do not adequately reflect local practices in the construction industry, in particular, the widespread use of helpers to perform certain craft tasks. For example, the 1976-1977 BLS survey of large metropolitan areas found that among non-union construction firms, the ratio of helpers to journeymen ranged from .35 for carpenters to .86 for bricklayers. The wage differences were also large—the average wage of helpers ranged from 58 percent (bricklayers) to 68 percent (carpenters) of that of journeymen.

The proposed regulation would expand the use of nonjourneymen in Davis-Bacon construction by issuing helper classifications on all wage determinations when they can be identified in the locality and by permitting conformance of helpers. Helpers would be broadly defined in the regulation, and permitted in a ratio of one helper to five journeymen. These changes should result in substantial cost savings by allowing contractors increased flexibility in their work assignments to use less-costly semi-skilled workers instead of journeymen.

The precise impact of the proposed changes on construction costs cannot be estimated with available data. Most importantly, while information exists on the relative wages of journeymen and helpers, there is no corresponding data on their relative productivities with which to measure the change in labor costs. As a result, we must again use wage differences to proxy these construction cost differences.

The Department used a different approach to estimate the wage impact of eliminating current restrictions on the issuance of helper rates. In order to calculate the potential wage savings, we tried to predict how the proposed revisions would alter the relative demand for helpers (in place of journeymen). The estimated additional number of helpers expected on Davis-Bacon projects was multiplied by an estimate of the difference in wages paid helpers and journeymen and average hours worked annually (1535 hours) in the construction industry to derive an estimate of the aggregate wage savings.

To derive an estimate of the mix of helpers and journeymen we assumed that once the current restrictions are lifted, the ratio of helpers to journeymen on Davis-Bacon construction projects would be identical to that found overall in construction (excluding single-family residential construction). Several estimates of this ratio are available from various published sources. We used a ratio derived from BLS survey data of large metropolitan areas indicating that one helper is hired for every seventeen journeymen. However, since this particular sample is heavily unionized (in the union sector, relatively fewer helpers are utilized), we also used a 1:10 ratio as an alternative estimate.

These ratios help us calculate the additional helpers expected. Applying these ratios to the universe of current journeymen on Davis-Bacon projects (estimated at 651,000) would indicate about 38,409 (or alternatively 65,100) additional helpers on such construction, under the proposed changes. Our estimates of the resulting cost savings from increased recognition of helpers were obtained by multiplying the number of additional helpers by the average hours worked in a year (1535) and various estimates of the wage differential between helpers and journeymen from available sources. The estimated cost savings assuming a 1:17 ratio range from about \$203 million to nearly \$410 million. With the lower 1:10 ratio, the corresponding estimates range as high as \$695 million. The average estimate based on these ranges is about \$450 million.



C. *Summary.* The proposed revisions discussed above, in conjunction with the changes proposed to Part 5 of the Davis-Bacon rules (e.g. deletion of the requirement for submission of weekly payroll records) will result in substantial cost savings annually of \$670 million for both contractors and the government while still assuring protection of local wage rates and practices. The changes will have a substantial beneficial impact on small contractors.

Copies of the complete analysis may be obtained from the Deputy Administrator, Wage and Hour Division, U.S. Department of Labor, 200 Constitution Avenue N.W., Washington, D.C. 20210. The Department requests comments and additional information on all economic assumptions used in the analysis as well as any alternative suggestions designed to achieve the objectives of Executive Order 12291 at lower costs.

Accordingly, it is proposed to revise Part 1 as set forth below:

Signed at Washington, D.C., on this 11th day of August, 1981.

Raymond J. Donovan,  
Secretary of Labor.

Robert B. Collyer,  
Deputy Under Secretary for Employment Standards.

## PART 1—PROCEDURES FOR PREDETERMINATION OF WAGE RATES

### Sec.

- 1.1 Purpose and scope.
- 1.2 Definitions.
- 1.3 Obtaining and compiling wage rate information.
- 1.4 Outline of agency construction programs.
- 1.5 Procedure for requesting wage determinations.
- 1.6 Use and effectiveness of wage determinations.
- 1.7 Scope of consideration.
- 1.8 Reconsideration by the Administrator.
- 1.9 Review by Wage Appeals Board.
- Appendix A.
- Appendix B.
- Appendix C.

Authority: 5 U.S.C. 301; R.S. 161, 64 Stat. 1267; Reorganization Plan No. 14 of 1950, 5 U.S.C. Appendix; 29 U.S.C. 259; 40 U.S.C. 276a—276e-7; 40 U.S.C. 276c; and the laws listed in Appendix A of this Part.

### § 1.1 Purpose and scope.

(a) The procedural rules in this part apply under the Davis-Bacon Act (46 Stat. 1494, as amended; 40 U.S.C. 276a—276e-7) and other statutes listed in Appendix A to this part which provide for the payment of minimum wages, including fringe benefits to laborers and mechanics engaged in construction activity under contracts entered into or

financed by or with the assistance of agencies of the United States or the District of Columbia, based on determinations by the Secretary of Labor of the wage rates and fringe benefits prevailing for the corresponding classes of laborers and mechanics employed on projects similar to the contract work in the local areas where such work is to be performed. Functions of the Secretary of Labor under these statutes and under Reorganization Plan No. 14 of 1950 (64 Stat. 1267, 5 U.S.C. Appendix), except those assigned to the Wage Appeals Board (see 29 CFR Part 7), have been delegated to the Assistant Secretary of Labor for Employment Standards who in turn has delegated the functions to the Administrator of the Wage and Hour Division, and authorized representatives.

(b) The regulations in this part set forth the procedures for making and applying such determinations of prevailing wage rates and fringe benefits pursuant to the Davis-Bacon Act, each of the other statutes listed in Appendix A, any other Federal statute providing for determinations of such wages by the Secretary of Labor in accordance with the provisions of the Davis-Bacon Act.

(c) Procedures set forth in this part are applicable, unless otherwise indicated, both to general wage determinations published in the Federal Register for contracts in specified localities, and to project wage determinations for use on contract work to be performed on a specific project.

### § 1.2 Definitions.<sup>1</sup>

(a) (1) The "prevailing wage" shall be the wage paid to the majority (more than 50 percent) of the laborers or mechanics in the classification on similar projects in the area during the period in question. If the same wage is not paid to a majority of those employed in the classification, the "prevailing wage" shall be the average of the wages paid, weighted by the total employed in the classification.

(2) In determining the "prevailing wages" at the time of issuance of a wage determination, the Administrator will be guided by paragraph (a)(1) of this section and will consider the types of information listed in § 1.3(b) of this part.

(b) The term "area" in determining wage rates under the Davis-Bacon Act and the prevailing wage provisions of the other statutes listed in Appendix A shall mean the city, town, village, county or other civil subdivision of the

State in which the work is to be performed.

(c) The term "Administrator" shall mean the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, or authorized representative. In the absence of the Wage-Hour Administrator, the Deputy Administrator of the Wage and Hour Division is designated to act for the Administrator under this part. Except as otherwise provided in this part, the Assistant Administrator for Government Contract Wage Standards is the authorized representative of the Administrator for the performance of functions relating to the making of wage determinations.

(d) The term "agency" shall mean the Federal agency, State highway department under 23 U.S.C. 113, or recipient State or local government under Title 1 of the State and Local Fiscal Assistance Act of 1972.

### § 1.3 Obtaining and compiling wage rate information.

For the purpose of making wage rate determinations, the Administrator will conduct a continuing program for the obtaining and compiling of wage rate information.

(a) The Administrator will encourage the voluntary submission of wage rate data by contractors, contractors' associations, labor organizations, public officials and other interested parties, reflecting wage rates paid to laborers and mechanics on various types of construction in the area. The Administrator may also obtain data from agencies on wage rates paid on construction projects under their jurisdiction. The information submitted should reflect not only the wage rates paid a particular classification in an area, but also the type or types of construction on which such rate or rates are paid.

(b) The following types of information will be considered in making wage rate determinations:

(1) Statements showing wage rates paid on projects. Such statements should indicate the names and addresses of contractors, including subcontractors, the locations, approximate costs, dates of construction and types of projects, the number of workers employed in each classification on each project, and the respective wage rates paid such workers.

(2) Signed collective bargaining agreements. The Administrator may request the parties to an agreement to submit statements certifying to its scope and application.

<sup>1</sup> These definitions are not intended to restrict the meaning of the terms as used in the applicable statutes.



(3) Wage rates determined for public construction by State and local officials pursuant to prevailing wage legislation.

(4) In making wage rate determinations pursuant to 23 U.S.C. 113, the highway department of the State in which a project in the Federal-Aid highway system is to be performed shall be consulted. Before making a determination of wage rates for such a project the Administrator shall give due regard to the information thus obtained.

(5) Wage rate data submitted to the Department of Labor by contracting agencies pursuant to 29 CFR 5.5(a)(1)(ii).

(6) Any other information pertinent to the determination of prevailing wage rates.

(c) The Administrator may initially obtain or supplement such information obtained on a voluntary basis by such means, including the holding of hearings, and from any sources determined to be necessary. All information of the types described in § 1.3(b) of this Part, pertinent to the determination of the wages prevailing at the time of issuance of the wage determination, will be evaluated in the light of § 1.2(a) of this Part.

#### § 1.4 Outline of agency construction programs.

To the extent practicable, at the beginning of each fiscal year each agency using wage determinations under any of the various statutes listed in Appendix A will furnish the Administrator with a general outline of its proposed construction programs for the coming year indicating the estimated number of projects for which wage determinations will be required, the anticipated types of construction, and the locations of construction. During the fiscal year, each agency will notify the Administrator of any significant changes in its proposed construction programs, as outlined at the beginning of the fiscal year. This report has been cleared in accordance with FPMR 101-11.11 and assigned interagency report control number 1671-DOL-AN.

#### § 1.5 Procedure for requesting wage determinations.

(a)(1) Except as provided in paragraph (b) of this section, the Federal agency shall initially request a wage determination under the Davis-Bacon Act or any of its related prevailing wage statutes by submitting Standard Form 308 to the Department of Labor at this address:

U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Branch of Construction Wage Determinations, Washington, D.C. 20210.

The agency shall check only those classifications on the applicable form which will be needed in the performance of the work. Inserting a note such as "entire schedule" or "all applicable classifications" is not sufficient. Additional classifications needed which are not on the form may be typed in the blank spaces or on a separate list and attached to the form. The agency shall not list classifications which can be fitted into classifications on the form, or classifications which are not generally recognized in the area or in the construction industry.

(2) In completing SF-308, the agency shall furnish:

(i) A sufficiently detailed description of the work to indicate the type of construction involved. Additional description or separate attachment, if necessary for identification of type of project, shall be furnished.

(ii) The county (or other civil subdivision) and State in which the proposed project is located.

(3) Such request for a wage determination shall be accompanied by any pertinent wage payment information which may be available. When the requesting agency is a State highway department under the Federal-Aid Highway Acts as codified in 23 U.S.C. 113, such agency shall also include its recommendations as to the wages which are prevailing for each classification of laborers and mechanics on similar construction in the area.

(b) Whenever the wage patterns in a particular area for a particular type of construction are well settled and whenever it may be reasonably anticipated that there will be a large volume of procurement in that area for such a type of construction, the Administrator, upon the request of a Federal agency or in his discretion, may publish a general wage determination in the *Federal Register* when, after consideration of the facts and circumstances involved, the Administrator finds that the applicable statutory standards and those of this part will be met. If there is a general wage determination applicable to the project, the agency may use it without notifying the Department of Labor, provided, that questions concerning its use are referred to the Department of Labor in accordance with § 1.6(b).

(c) The time required for processing requests for wage determinations varies according to the facts and circumstances in each case. An agency should anticipate that such processing in the Department of Labor will take at least 30 days.

#### § 1.6 Use and effectiveness of wage determinations.

(a)(1) Project wage determinations initially issued shall be effective for 180 calendar days from the date of such determinations. If such a wage determination is not used in the period of its effectiveness it is void. Accordingly, if it appears that a wage determination may expire between bid opening and contract award (or between initial endorsement under the National Housing Act or the execution of an agreement to enter into a housing assistance payments contract under section 8 of the U.S. Housing Act of 1937, and the start of construction) the agency shall request a new wage determination sufficiently in advance of the bid opening to assure receipt prior thereto. However, when due to unavoidable circumstances a determination expires before award but after bid opening (or before the start of construction, but after initial endorsement under the National Housing Act, or before the start of construction but after the execution of an agreement to enter into a housing assistance payments contract under Section 8 of the U.S. Housing Act of 1937), the head of the agency or his or her designee may request the Administrator to extend the expiration date of the wage determination in the bid specifications instead of issuing a new wage determination. Such request shall be supported by a written finding which shall include a brief statement of the factual support, that the extension of the expiration date of the determination is necessary and proper in the public interest to prevent injustice or undue hardship or to avoid serious impairment in the conduct of Government business. The Administrator will either grant or deny the request for an extension after consideration of all of the circumstances, including an examination to determine if the previously issued rates remain prevailing. If the request for extension is denied, the Administrator will proceed to issue a new wage determination for the project.

(2) General wage determinations issued pursuant to § 1.5(b) and which are published in the *Federal Register*, shall contain no expiration date.

(b) The criteria set forth in Appendix C should be used for guidance in how to apply wage determinations to projects. Any question regarding application of wage rate schedules or the guidelines contained in Appendix C shall be referred to the Administrator, who shall give foremost consideration to area practice in resolving the question.



(c)(1) Project and general wage determinations may be modified from time to time to keep them current. A modification may specify only the items being changed, or may be in the form of a supersedeas wage determination, which replaces the entire wage determination. Such actions are distinguished from a determination by the Administrator under paragraphs (d), (e) and (f) of this section that an erroneous wage determination has been issued or that the wrong wage determination or wage rate schedule has been utilized by the agency.

(2)(i) All actions modifying a project wage determination received by the agency before contract award (or the start of construction where there is no contract award) shall be effective except as follows:

(A) In the case of contracts entered into pursuant to competitive bidding procedures, modifications received by the agency less than 10 days before the opening of bids shall be effective unless the agency finds that there is not a reasonable time still available before bid opening, to notify bidders of the modification and a report of the finding is inserted in the contract file. A copy of such report shall be made available to the Administrator upon request. No such report shall be required if the modification is received after bid opening.

(B) In the case of those contracts entered into under the National Housing Act which are not awarded pursuant to competitive bidding procedures, modifications shall be effective if received prior to the beginning of construction or the date the mortgage is initially endorsed, whichever occurs first.

(C) In the case of projects to receive housing assistance payments under section 8 of the U.S. Housing Act of 1937, if there is no contract for the project awarded pursuant to competitive bidding procedures, modifications shall be effective if received prior to the beginning of construction or the date the agreement to enter into a housing assistance payments contract is executed, whichever occurs first.

(ii) Modifications to project wage determinations and supersedeas wage determinations shall not be effective after contract award, or after the beginning of construction, as appropriate.

(iii) Actual written notice of a modification shall constitute receipt.

(3) All actions modifying a general wage determination shall be effective with respect to any project to which the determination applies, if published before contract award (or the start of

construction where there is no contract award), except as follows:

(i) In the case of contracts entered into pursuant to competitive bidding procedures, modifications published less than 10 days before the opening of bids shall be effective unless the agency finds that there is not a reasonable time still available before bid opening to notify bidders of the modification and a report of the finding is inserted in the contract file. A copy of such report shall be made available to the Administrator upon request. No such report shall be required if the modification is published after bid opening.

(ii) In the case of those contracts entered into under the National Housing Act which are not awarded pursuant to competitive bidding procedures, modifications shall be effective if published prior to the beginning of construction or the date the mortgage is initially endorsed, whichever occurs first.

(iii) In the case of projects to receive housing assistance payments under section 8 of the U.S. Housing Act of 1937, if there is no contract for the project awarded pursuant to competitive bidding procedures, modifications shall be effective if published prior to the beginning of construction or the date the agreement to enter into a housing assistance payments contract is signed, whichever occurs first.

(iv) If under paragraph (c)(3)(i) of this section the contract has not been awarded within 90 days after bid opening, or if under paragraph (c)(3)(ii) or (iii) of this section construction has not begun within 90 days after initial endorsement or the signing of the agreement to enter into a housing assistance payments contract, any modifications published in the *Federal Register* prior to award of the contract or the beginning of construction, as appropriate, shall be effective with respect to that contract unless the head of the agency or his or her designee requests and obtains an extension of the 90-day period from the Administrator. Such request shall be supported by a written finding, which shall include a brief statement of the factual support, that the extension is necessary and proper in the public interest to prevent injustice or undue hardship or to avoid serious impairment in the conduct of Government business. The Administrator will either grant or deny the request for an extension after consideration of all the circumstances.

(v) A modification to a general wage determination is "published" within the meaning of this section on the date of publication in the *Federal Register*, or on the date the agency receives actual

written notice of the modification from the Department of Labor, whichever occurs first.

(vi) Modifications or supersedeas wage determinations to an applicable general wage determination published after contract award or after the beginning of construction, as appropriate, shall not be effective.

(d) Upon his/her own initiative or at the request of an agency, the Administrator may correct any wage determination, without regard to paragraph (c) of this section, whenever the Administrator finds such a wage determination contains clerical errors. Such corrections shall be included in any bid specifications containing the wage determination, or in any on-going contract containing the wage determination in question, retroactively to the start of construction.

(e) Written notification by the Department of Labor prior to the award of a contract (or the start of construction under the National Housing Act, under Section 8 of the U.S. Housing Act of 1937, or where there is no contract award) that (1) there is included in the bidding documents or solicitation the wrong wage determination or the wrong schedule or that (2) a wage determination is withdrawn because the Department of Labor has determined that it contains substantial errors (as distinguished from rates which are no longer current), shall be effective immediately without regard to paragraph (c) of this section.

(f) The Administrator may issue a wage determination after contract award or after the beginning of construction if the agency has failed to incorporate a wage determination in a contract required to contain prevailing wage rates determined in accordance with the Davis-Bacon Act, or has used a wage determination which by its terms or the provisions of this part clearly does not apply to the contract. Further, the Administrator may issue a wage determination which shall be applicable to a contract after contract award or after the beginning of construction when it is found that the wrong wage determination has been incorporated in the contract because of an inaccurate description of the project or its location in the agency's request for the wage determination. Under any of the above circumstances, the agency shall either terminate and resolicit the contract with the valid wage determination, or incorporate the valid wage determination retroactive to the beginning of construction through supplemental agreement or through change order, *provided* that the



contractor is compensated for any increases in wages resulting from such change. The method of incorporation of the valid wage determination, and adjustment in contract price, where appropriate, should be in accordance with applicable procurement law.

(g) If Federal funding or assistance under a statute requiring payment of wages determined in accordance with the Davis-Bacon Act is not approved prior to contract award or the beginning of construction, as appropriate, the agency shall request a wage determination prior to approval of such funds. Such a wage determination shall be issued based upon the wages and fringe benefits found to be prevailing on the date of award or the beginning of construction (under the National Housing Act, under Section 8 of the U.S. Housing Act of 1937 or where there is no contract award), as appropriate, and shall be incorporated in the contract specifications retroactively to that date, *provided*, that upon the request of the head of the agency in individual cases the Administrator may issue such a wage determination to be effective on the date of approval of Federal funds or assistance whenever the Administrator finds that it is necessary and proper in the public interest to prevent injustice or undue hardship, *provided further* that the Administrator finds no evidence of intent to apply for Federal funding or assistance prior to contract award or the start of construction, as appropriate.

#### § 1.7 Scope of consideration.

(a) In making a wage determination, the "area" will normally be the county unless sufficient current wage data (data on wages paid no more than one year prior to the beginning of the survey or the request for a wage determination, as appropriate) is unavailable to make a wage determination.

(b) If there has not been sufficient similar construction within the area in the past year to make a wage determination. Wages paid on similar construction in surrounding counties may be considered, *provided* that projects in metropolitan counties may not be used as a source of data for a wage determination in a rural county, and projects in rural counties may not be used as a source of data for a wage determination for a metropolitan county.

(c) If there has not been sufficient similar construction in surrounding counties or in the State in the past year, wages paid on projects completed more than one year prior to the beginning of the survey or the request for a wage determination, as appropriate, may be considered.

(d) Classifications and wage rates will be issued for identifiable "classes of laborers and mechanics." A semi-skilled classification of laborers or helpers, or other subclassification of a journeyman classification, is issued when the classification is identifiable in the area. The use of helpers, apprentices and trainees is permitted in accordance with Part 5 of this subtitle.

#### § 1.8 Reconsideration by the Administrator.

Any interested person may seek reconsideration of a wage determination issued under this part or of a decision of the Administrator regarding application of a wage determination. Such a request for reconsideration shall be in writing accompanied by a full statement of the interested person's views and any supporting wage data or other pertinent information. The Administrator will respond within 30 days of receipt thereof, or will notify the requestor within the 30 day period that additional time is necessary.

#### § 1.9 Review by Wage Appeals Board.

Any interested person may appeal to the Wage Appeals Board for a review of a wage determination or its application made under this part, after reconsideration by the Administrator has been sought pursuant to § 1.8 and denied. Any such appeal may, in the discretion of the Wage Appeals Board, be received, accepted, and decided in accordance with the provisions of 29 CFR Part 7 and such other procedures as the Board may establish.

#### Appendix A

##### *Statutes Related to the Davis-Bacon Act Requiring Payment of Wages at Rates Predetermined by the Secretary of Labor*

1. The Davis-Bacon Act (secs. 1-7, 46 Stat. 1494, as amended; Pub. L. 74-403, 40 U.S.C. 276a-276a-7).
2. National Housing Act (sec. 212 added to c. 847, 48 Stat. 1248, by sec. 14, 53 Stat. 807; 12 U.S.C. 1715c and repeatedly amended).
3. Housing Act of 1950 (college housing) (amended by Housing Act of 1959 to add labor provisions, 73 Stat. 681; 12 U.S.C. 1749a(f)).
4. Housing Act of 1959 (sec. 401(f) of the Housing Act of 1950 as amended by Pub. L. 86-372, 73 Stat. 681; 12 U.S.C. 1701q(c)(3)).
5. Commercial Fisheries Research and Development Act of 1964 (sec. 7, 78 Stat. 199; 16 U.S.C. 779e(b)).
6. Library Services and Construction Act (sec. 7(a), 78 Stat. 13; 20 U.S.C. 355c(a)(4), as amended).
7. National Technical Institute for the Deaf Act (sec. 5(b)(5), 79 Stat. 126; 20 U.S.C. 684(b)(5)).
8. National Foundation on the Arts and Humanities Act of 1965 (sec. 5(k), 79 Stat. 846 as amended; 20 U.S.C. 954(j)).

9. Elementary and Secondary Education Act of 1965 as amended by Elementary and Secondary and other Education Amendments of 1969 (sec. 423 as added by Pub. L. 91-230, title IV, sec. 401(a)(10), 84 Stat. 169, and renumbered sec. 433, by Pub. L. 92-318, title III, sec. 301(a)(1), 86 Stat. 328; 20 U.S.C. 1232(b)). Under the amendment coverage is extended to all programs administered by the Commissioner of Education.

10. The Federal-Aid Highway Act of 1956 (sec. 108(b), 70 Stat. 378, recodified at 72 Stat. 895; 23 U.S.C. 113 as amended), see particularly the amendments in the Federal-Aid Highway Act of 1963 (Pub. L. 90-495, 62 Stat. 815).

11. Indian Self-Determination and Education Assistance Act (sec. 7, 88 Stat. 2205; 25 U.S.C. 450e).

12. Indian Health Care Improvement Act (sec. 303(b), 90 Stat. 1407; 25 U.S.C. 1633(b)).

13. Rehabilitation Act of 1973 (sec. 306(b)(5), 87 Stat. 384, 29 U.S.C. 776(b)(5)).

14. Comprehensive Employment and Training Act of 1973 (sec. 606, 87 Stat. 880, renumbered sec. 706 by 83 Stat. 1845; 29 U.S.C. 986; also sec. 604, 88 Stat. 1846; 29 U.S.C. 964(b)(3)).

15. State and Local Fiscal Assistance Act of 1972 (sec. 123(a)(6), 86 Stat. 933; 31 U.S.C. 1246(a)(6)).

16. Federal Water Pollution Control Act (sec. 513 of sec. 2, 86 Stat. 894; 33 U.S.C. 1372).

17. Veterans Nursing Home Care Act of 1964 (78 Stat. 502, as amended; 38 U.S.C. 5035(a)(8)).

18. Postal Reorganization Act (sec. 410(b)(4)(C); 84 Stat. 726 as amended; 39 U.S.C. 410(b)(4)(C)).

19. National Visitors Center Facilities Act of 1968 (sec. 110, 32 Stat. 45; 40 U.S.C. 808).

20. Appalachian Regional Development Act of 1965 (sec. 402, 79 Stat. 21; 40 U.S.C. App. 402).

21. Health Services Research, Health Statistics, and Medical Libraries Act of 1974 (sec. 107, see sec. 306(h)(2) thereof, 83 Stat. 370, as amended by 90 Stat. 378; 42 U.S.C. 242m(h)(2)).

22. Hospital Survey and Construction Act, as amended by the Hospital and Medical Facilities Amendments of 1964 (sec. 605(a)(5), 78 Stat. 453; 42 U.S.C. 291e(a)(5)).

23. Health Professions Education Assistance Act (sec. 303(b), 90 Stat. 2254; 42 U.S.C. 293a(g)(1)(C); also sec. 308a, 90 Stat. 2256, 42 U.S.C. 293a(c)(7)).

24. Nurse Training Act of 1964 (sec. 941(a)(1)(C), 89 Stat. 364; 42 U.S.C. 296a(b)(5)).

25. Heart Disease, Cancer, and Stroke Amendments of 1965 (sec. 904, as added by sec. 2, 79 Stat. 928; 42 U.S.C. 299d(b)(4)).

26. Safe Drinking Water Act (sec. 2(a), see sec. 1450e thereof, 88 Stat. 1691; 42 U.S.C. 300j-9(e)).

27. National Health Planning and Resources Act (sec. 4, see sec. 1604(b)(1)(H), 88 Stat. 2261, 42 U.S.C. 300o-3(b)(1)(H)).

28. U.S. Housing Act of 1937, as amended and recodified (88 Stat. 667; 42 U.S.C. 1437j).

29. Demonstration Cities and Metropolitan Development Act of 1966 (secs. 110, 311, 503, 1003, 80 Stat. 1259, 1270, 1277, 1284; 42 U.S.C. 3310; 12 U.S.C. 1715c; 42 U.S.C. 1437j).



30. Slum clearance program: Housing Act of 1949 (sec. 109, 63 Stat. 419, as amended; 42 U.S.C. 1459).

31. Farm housing: Housing Act of 1964 (adds sec. 516(f) to Housing Act of 1949 by sec. 503, 78 Stat. 797; 42 U.S.C. 1486(f)).

32. Housing Act of 1961 (sec. 707, added by sec. 907, 79 Stat. 496, as amended; 42 U.S.C. 1500c-3).

33. Defense Housing and Community Facilities and Services Act of 1951 (sec. 310, 65 Stat. 307; 42 U.S.C. 1592i).

34. Special Health Revenue Sharing Act of 1975 (sec. 303, see sec. 222(a)(5) thereof, 89 Stat. 324; 42 U.S.C. 2889(a)(5)).

35. Economic Opportunity Act of 1964 (sec. 607, 78 Stat. 532; 42 U.S.C. 2947).

36. Headstart, Economic Opportunity, and Community Partnership Act of 1974 (sec. 11, see sec. 811 thereof, 88 Stat. 2327; 42 U.S.C. 2992a).

37. Housing and Urban Development Act of 1965 (sec. 707, 79 Stat. 492 as amended; 42 U.S.C. 3107).

38. Older Americans Act of 1965 (sec. 502, Pub. L. 89-73, as amended by sec. 501, Pub. L. 93-29; 87 Stat. 50; 42 U.S.C. 3041a(a)(4)).

39. Public Works and Economic Development Act of 1965 (sec. 712, 79 Stat. 575 as amended; 42 U.S.C. 3222).

40. Juvenile Delinquency Prevention Act (sec. 1, 86 Stat. 536; 42 U.S.C. 3884).

41. New Communities Act of 1968 (sec. 410.82 Stat. 516; 42 U.S.C. 3909).

42. Urban Growth and New Community Development Act of 1970. (sec. 727(f), 84 Stat. 1803; 42 U.S.C. 4529).

43. Domestic Volunteer Service Act of 1973 (sec. 406, 87 Stat. 410; 42 U.S.C. 5046).

44. Housing and Community Development Act of 1974 (secs. 110, 802(g), 83 Stat. 649, 724; 42 U.S.C. 5310, 1440(g)).

45. Developmentally Disabled Assistance and Bill of Rights Act (sec. 126(4), 89 Stat. 488; 42 U.S.C. 6042(4); title I, sec. 111, 89 Stat. 491; 42 U.S.C. 6063(b)(19)).

46. National Energy Conservation Policy Act (sec. 312, 92 Stat. 3254; 42 U.S.C. 6371j).

47. Public Works Employment Act of 1976 (sec. 109, 90 Stat. 1001; 42 U.S.C. 6708; also sec. 208, 90 Stat. 1008; 42 U.S.C. 6728).

48. Energy Conservation and Production Act (sec. 45(h), 90 Stat. 1168; 42 U.S.C. 6881(h)).

49. Solid Waste Disposal Act (sec. 2, 90 Stat. 2828; 42 U.S.C. 6979).

50. Rail Passenger Service Act of 1970 (sec. 405d, 84 Stat. 1337; 45 U.S.C. 565(d)).

51. Urban Mass Transportation Act of 1964 (sec. 10, 78 Stat. 307; renumbered sec. 13 by 88 Stat. 715; 49 U.S.C. 1609).

52. Highway speed ground transportation study (sec. 6(b), 79 Stat. 893; 49 U.S.C. 1636(b)).

53. Airport and Airway Development Act of 1970 (sec. 22(b), 84 Stat. 231; 49 U.S.C. 1722(b)).

54. Federal Civil Defense Act of 1950 (50 U.S.C. App. 2281(i)).

55. National Capital Transportation Act of 1965 (sec. 3(b)(4), 79 Stat. 40; 42 U.S.C. 682(b)(4)).

**Note.**—Repealed Dec. 9, 1969 and labor standards incorporated in sec. 1-1431 of the District of Columbia Code.

56. Model Secondary School for the Deaf Act (sec. 4, 80 Stat. 1027, Pub. L. 89-694, but not in the United States Code).

57. Delaware River Basin Compact (sec. 15.1, 75 Stat. 714, Pub. L. 87-328) (considered a statute for purposes of this part but not in the United States Code).

58. Energy Security Act (Sec. 175(c), Pub. L. 96-294, 94 Stat. 611; 42 U.S.C. 8701 note).

#### Appendix B

##### *Boston Region*

For the States of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont:

Assistant Regional Administrator for Wage-Hour, Employment Standards Administration, U.S. Department of Labor, JFK Federal Building, Government Center, Room 1612C, Boston, Massachusetts 02203 (telephone: 617-223-5565).

##### *New York Region*

For the States of New Jersey and New York and for the Canal Zone, Puerto Rico, and the Virgin Islands:

Assistant Regional Administrator for Wage-Hour, Employment Standards Administration, U.S. Department of Labor, 1515 Broadway, Room 3300, New York, New York 10036 (telephone: 212-399-5443).

##### *Philadelphia Region*

For the States of Delaware, Maryland, Pennsylvania, Virginia, and West Virginia, and the District of Columbia:

Assistant Regional Administrator for Wage-Hour, Employment Standards Administration, U.S. Department of Labor, Gateway Building, Room 15220, 3535 Market Street, Philadelphia, Pennsylvania 19104 (telephone 215-596-1193).

##### *Atlanta Region*

For the States of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee:

Assistant Regional Administrator for Wage-Hour, Employment Standards Administration, U.S. Department of Labor, 1371 Peachtree Street, N.E., Room 305, Atlanta, Georgia 30309 (telephone: 404-881-4801).

##### *Chicago Region*

For the States of Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin:

Assistant Regional Administrator for Wage-Hour, Employment Standards Administration, U.S. Department of Labor, 230 South Dearborn Street, 8th Floor, Chicago, Illinois 60604 (telephone: 312-353-7249).

##### *Dallas Region*

For the States of Arkansas, Louisiana, New Mexico, Oklahoma, and Texas:

Assistant Regional Administrator for Wage-Hour, Employment Standards Administration, U.S. Department of Labor, 555 Griffin Square Building, Young and Griffin Streets, Dallas, Texas 75202 (telephone: 214-767-6891).

##### *Kansas City Region*

For the States of Iowa, Kansas, Missouri, and Nebraska:

Assistant Regional Administrator for Wage-Hour, Employment Standards

Administration, U.S. Department of Labor, Federal Office Building, Room 2000, 911 Walnut Street, Kansas City, Missouri 64106 (telephone: 816-374-5386).

##### *Denver Region*

For the States of Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming:

Assistant Regional Administrator for Wage-Hour, Employment Standards Administration, U.S. Department of Labor, Federal Office Building, Room 1440, 1961 Stout Street, Denver, Colorado 80294 (telephone: 304-837-4613).

##### *San Francisco Region*

For the States of Arizona, California, Hawaii, and Nevada:

Assistant Regional Administrator for Wage-Hour, Employment Standards Administration, U.S. Department of Labor, 450 Golden Gate Avenue, Room 10353, San Francisco, California 94102 (telephone: 415-556-3592).

##### *Seattle Region*

For the States of Alaska, Idaho, Oregon, and Washington:

Assistant Regional Administrator for Wage-Hour, Employment Standards Administration, U.S. Department of Labor, Federal Office Building, Room 4141, 909 First Avenue, Seattle, Washington 98174 (telephone: 206-442-1916).

#### Appendix C

Subject: Application Of The Standard Of Comparison "Projects Of A Character Similar" Under The Davis-Bacon And Related Acts

The purpose of this memorandum is to set forth policies of the Wage and Hour Division with regard to the determination of "projects of a character similar to the contract work" for wage determination purposes. The guidelines contained in the memorandum are illustrative in nature. They should be used by the contracting agencies in selecting the proper schedule(s) of wage rates from the **Federal Register** and in instructing contractors regarding the application of multiple schedules, unless the Wage and Hour Division advises otherwise. This memorandum supersedes All Agency Memorandum No. 68 (July 19, 1966), No. 130 (March 17, 1978), and No. 131 (July 14, 1978).

The Davis-Bacon and related Acts require the Secretary of Labor to determine the prevailing wage rates for corresponding classes of laborers and mechanics on projects in the area which are of a "character similar" to the proposed contract work to which the determination will be applied. The Department's Wage Appeals Board in a decision specifically relating to high-rise apartment buildings (WAB Case No. 76-11, dated January 27, 1977) stated:

"The test of whether a project is of a character similar to another project refers to the nature of the project itself in a construction sense, not to whether union or nonunion wages are paid or whether union or nonunion workers are employed. Since the 1935 amendments to the Davis-Bacon Act, the statutory focus has always been on the



character of the project itself rather than on who was employed on the project or how much he or she was being paid."

Again, in a decision relating to a water treatment plant project (WAB Case No. 77-20, dated September 30, 1977), the Board stated: "When it is clear from the nature of the project itself in a construction sense that it is to be categorized as either building, heavy, or highway construction it is not necessary to resort to an area practice survey to determine the appropriate categorization of the project."

Where the proper category of construction is not clear, however, the Board has advised that the wages being paid may be considered to determine the appropriate category of construction, together with other characteristics, such as construction techniques, material and equipment used, and skills called for. WAB Case No. 77-23, dated December 30, 1977.

Generally, construction projects are classified as either Building, Heavy, Highway or Residential.<sup>1</sup> However, separate wage rate schedules are applied where a project includes structures in more than one category and the amount of construction in each category is substantial, either in relation to the overall project (approximately 20 percent or more of total project cost) or in dollar amount (approximately \$250,000 or more). Separate schedules are common, for example, for water and sewage treatment plants, which generally include both buildings and non-building structures. On the other hand, water and sewer lines and paving on building projects are generally only incidental to a project, and therefore separate schedules are not ordinarily issued.<sup>2</sup>

Below are descriptions of the four major categories of construction, together with an illustrative list of the kinds of projects which are generally included within each category:

#### Building Construction

Building construction generally is the construction of sheltered enclosures with walk-in access for the purpose of housing persons, machinery, equipment, or supplies. It includes all construction of such structures, the installation of utilities and the installation of equipment, both above and below grade level, as well as incidental grading, utilities

and paving. Additionally, such structures need not be "habitable" to be building construction. The installation of heavy machinery and/or equipment does not generally change the project's character as a building.

#### Examples

Alterations and additions to buildings  
Apartment buildings (5 stories and above)  
Arenas (enclosed)  
Auditoriums  
Automobile parking garages  
Banks and financial buildings  
Barracks  
Churches  
City halls  
Civic centers  
Commercial buildings  
Court houses  
Detention facilities  
Dormitories  
Farm buildings  
Fire stations  
Hospitals  
Hotels  
Industrial buildings  
Institutional buildings  
Libraries  
Mausoleums  
Motels  
Museums  
Nursing and convalescent facilities  
Office buildings  
Out-patient clinics  
Passenger and freight terminal buildings  
Police stations  
Post offices  
Power plants  
Prefabricated buildings  
Remodeling buildings  
Renovating buildings  
Repairing buildings  
Restaurants  
Schools  
Service stations  
Shopping centers  
Stores  
Subway stations  
Theaters  
Warehouses  
Water and sewage treatment plants (buildings only)

#### Residential Construction

Residential projects for Davis-Bacon purposes are those involving the construction, alteration, or repair of single family houses or apartment buildings of no more than four (4) stories in height. This includes all incidental items such as site work, parking areas, utilities, streets and sidewalks.

#### Examples

Town or row houses  
Apartment buildings (4 stories or less)  
Single family houses  
Mobile home developments  
Multi-family houses  
Married student housing

#### Heavy Construction

Heavy projects are those projects that are not properly classified as either "building", "highway", or "residential". Unlike these

classifications, heavy construction is not a homogeneous classification. Because of this catch-all nature, projects within the heavy classification may sometimes be distinguished on the basis of their particular project characteristics, and separate schedules issued. For example, separate schedules may be issued for dredging projects, water and sewer line projects, dams, major bridges, and flood control projects.

#### Examples

Antenna towers  
Bridges (bascul, suspension and spandrel arch bridges; bridges designed for commercial navigation; bridges involving marine construction; and other major bridges)  
Breakwaters  
Caissons (other than building or highway)  
Canals  
Channels  
Channel cut-offs  
Chemical complexes or facilities (other than buildings)  
Cofferdams  
Coke ovens  
Dams  
Dikes  
Docks  
Drainage projects  
Dredging projects  
Electrification projects (outdoor)  
Flood control projects  
Industrial incinerators (other than building)  
Irrigation projects  
Jetties  
Kilns  
Land drainage (not incidental to other construction)  
Land leveling (not incidental to other construction)  
Land reclamation  
Levees  
Locks, waterways  
Oil refineries (other than buildings)  
Pipe lines  
Ponds  
Pumping stations (prefabricated drop-in units)  
Railroad construction  
Reservoirs  
Revetments  
Sewage collection and disposal lines  
Sewers (sanitary, storm, etc.)  
Shoreline maintenance  
Ski tows  
Storage tanks  
Swimming pools (outdoor)  
Subways (other than stations and buildings)  
Tipples  
Tunnels  
Unsheltered piers and wharves  
Viaducts (other than highway)  
Water mains  
Waterway construction  
Water supply lines (not incidental to building)  
Water and sewage treatment plants (other than buildings)  
Wells

#### Highway Construction

Highway projects include the construction, alteration or repair of roads, streets,

<sup>1</sup> For wage determination purposes, a project generally consists of all construction necessary to complete a facility regardless of the number of contracts involved, so long as all contracts awarded are closely related in purpose, time and place. For example, demolition or site work preparatory to building construction is considered a part of the building project for wage determination purposes. In contrast, because of the extensive size of a rapid rail system or a highway, which is built over a period of years, each segment is considered a separate project. See MARTA, WAB Case No. 75-5, dated October 18, 1975. Similarly, a rest area on a highway is considered a separate project.

<sup>2</sup> In certain areas of the country different wage rates are paid for incidental paving and utilities than for the remainder of a building project. Accordingly, in such areas the Wage and Hour Division issues the rates which are paid on such work on building projects. See WAB Case No. 77-19, dated December 30, 1977.



highways, runways, taxiways, alleys, trails, paths, parking areas, and other similar projects not incidental to building or heavy construction.

#### Examples

Alleys  
Base courses  
Bituminous treatments  
Bridle paths  
Concrete pavement  
Curbs  
Excavation and embankment (for road construction)  
Fencing (highway)  
Grade crossing elimination (overpasses or underpasses)  
Guard rails on highway  
Highway signs  
Highway bridges (overpasses; underpasses; grade separation)  
Medians  
Parking lots  
Parkways  
Resurfacing streets and highways  
Roadbeds  
Roadways  
Runways  
Shoulders  
Stabilizing courses  
Storm sewers incidental to road construction  
Street Paving  
Surface courses  
Taxiways  
Trails

Unless the Wage and Hour Division advises otherwise, as set forth below, the descriptions and classifications above are to be utilized by contracting agencies in

selecting the appropriate wage schedule from the **Federal Register** and in determining the application of multiple schedules issued by the Wage and Hour Division. The advertised and contract specifications should identify as specifically as possible the structures to which the schedule applies and only the appropriate schedule(s) from the **Federal Register** should be incorporated into the specifications. Where multiple schedules are issued for a project by the Wage and Hour Division, they are to be utilized in the specifications and any applicable instructions regarding their use are to be observed.

To ensure that appropriate schedules are issued by the Wage and Hour Division, contracting agencies are reminded of their responsibility to provide a sufficiently detailed description of the project to enable the Wage and Hour Division to determine the character of the project. If structures in more than one category of construction are involved, such structures should be identified, together with an estimate of the cost of those structures in dollar amounts and in relation to total project cost.

Furthermore, contracting agencies have the authority only in the first instance to designate the appropriate wage schedule(s) from the **Federal Register** and, in the absence of instructions from the Wage and Hour Division, to determine the application of multiple schedules issued by the Wage and Hour Division in project wage determinations. It is recognized that in individual cases or with respect to specific areas of the country, application of these guidelines may not be appropriate, such as where the category of construction is not clear and a definitive area practice has

developed. For example, major bridges are ordinarily heavy construction, but have attributes of both heavy and highway construction; accordingly, area practice will determine whether heavy rates, highway rates, or a combination thereof, are applicable to a project. Similarly, pumping stations vary greatly in sophistication and construction techniques, requiring close examination.

In any instance where a contracting agency has a question regarding application of the guidelines to a specific case, or where a question is raised by interested parties concerning the appropriate schedule(s) to be applied to a contract, the question is to be referred to the Wage and Hour Division. This referral should include a complete description of the project, any evidence available regarding area practice of wages paid on similar projects, comments by interested parties which may have been submitted to the agency, and the agency's own view.

Agencies are advised that the U.S. Court of Appeals for the Fifth Circuit has ruled that where a party has objected to a Federal agency's application of a general wage determination to a project, the question must be submitted to the Department of Labor pursuant to the regulations, 29 CFR 5.13, and bid opening cannot proceed until the dispute is resolved by the Secretary. *North Georgia Building and Construction Trades, supra*. The Wage and Hour Division will endeavor to cooperate with the contracting agencies in acting expeditiously with a view towards procurement deadlines.

[FR Doc. 81-23735 Filed 8-13-81; 8:45 am]

BILLING CODE 4510-27-M



*[The page contains extremely faint, illegible text, likely bleed-through from the reverse side. The text is organized into three columns.]*



# **federal register**

---

**Friday  
August 14, 1981**

---

## **Part VIII**

## **Department of Labor**

---

**Wage and Hour Division, Employment  
Standards Administration**

---

**Labor Standards Provisions Applicable to  
Contracts Covering Federally Financed  
and Assisted Construction (Also Labor  
Standards Provisions Applicable to  
Nonconstruction Contracts Subject to the  
Contract Work Hours and Safety  
Standards Act)**



## DEPARTMENT OF LABOR

## Wage and Hour Division, Employment Standards Administration

## 29 CFR Part 5

## Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (Also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)

**AGENCY:** Wage and Hour Division, Employment Standards Administration, Labor.

**ACTION:** Proposed rule.

**SUMMARY:** This document is a proposal to revise Regulations on labor standards covering federally financed and assisted construction and contracts subject to the Contract Work Hours and Safety Standards Act, Part 5, Subpart A. These regulations are issued pursuant to the Secretary's authority under Reorganization Plan No. 14 of 1950 and 40 U.S.C. 276c. Changes are proposed in the contract labor standards clauses which are required to be included in such construction contracts to eliminate the requirement that contractors and subcontractors submit weekly payrolls to the appropriate Federal agencies and to provide for the increased use of helpers whenever they are utilized in the area.

**DATES:** Comments (three copies) must be received on or before October 13, 1981.

**ADDRESS:** Comments should be sent to William M. Otter, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S-3502, 200 Constitution Avenue, NW., Washington, D.C. 20210

**FOR FURTHER INFORMATION CONTACT:** William M. Otter, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S-3502, 200 Constitution Avenue, NW., Washington, D.C. 20210, Telephone: 202-523-8305.

**SUPPLEMENTARY INFORMATION:** On December 28, 1979, a proposal was published in the Federal Register (44 FR 77080) to make certain revisions to Subpart A of Regulations, 29 CFR Part 5, Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (Also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act). The purpose of these changes was to revise, update, and clarify this subpart.

Interested persons were afforded the

opportunity to submit comments to the Wage and Hour Division within 60 days after publication of the notice in the Federal Register. Subsequently, on February 15 and April 1, 1980, notice was given in the Federal Register extending the dates for submission of comments to March 27 and May 27, 1980, respectively. On January 16, 1981, this regulation was published in the Federal Register (46 FR 4380) as a final rule with a scheduled effective date of February 17, 1981. However, pursuant to the President's Memorandum of January 29, 1981, the Department published a notice in the Federal Register on February 6, 1981 (46 FR 11253), delaying implementation of this regulation until March 30, 1981. The Department subsequently delayed the implementation of this regulation until August 15, 1981 in order to permit reconsideration pursuant to Executive Order 12291. See 46 FR 18973 (March 27, 1981); 46 FR 23739 (April 28, 1981); 46 FR 33514 (June 30, 1981); and 46 FR 36140 (July 14, 1981).

During this period, the Department conducted a thorough review of this regulation and has made appropriate proposed changes to the published rule as contained in this document. Accordingly, this regulation is being postponed by separate document until action is taken on this proposal. It has been concluded, in accordance with Executive Order 12291, that the proposed changes are the most cost effective alternative consistent with the purpose of the statute.

The regulations proposed today would not appear to require a regulatory impact analysis under the Executive Order since these changes will result in substantial cost savings annually for both contractors and the government while still assuring protection of local wage rates and practices, and effective enforcement of the Act. Because of the importance to the government and the public of the issues involved, the Department has, nevertheless, concluded that the regulation should be deemed a "major" rule for purposes of Executive Order 12291. The Department's initial regulatory impact analysis and the initial regulatory flexibility analysis assessing the impact of the proposed changes on small entities, as required by the Regulatory Flexibility Act, are summarized after the discussion below of the proposed changes.

Section 5.2(1), defining "site of the work", would be revised for clarification.

Section 5.2(n)(4) would be revised to provide a general definition of semi-skilled "helper", and § 5.5(a)(4)(iv) would be revised to add a provision

setting forth the conditions under which helpers will be permitted to work on Federal or Federally assisted projects. A revision in § 5.5(a)(1)(ii) would permit a helper classification to be established through the conformance process where the classification is utilized in the area, but is not listed on the wage determination.

These revisions have been proposed to reflect the industry practice of employing semi-skilled workers on construction projects. However, to protect against possible abuse, the regulation would prohibit use of journeymen as helpers and restrict the ratio of helpers to journeymen to one similar to that permitted under apprenticeship programs.

Section 5.5(a)(2) would be revised to make it clear that where the subcontractor has violated the Act, withholding from other contracts can only be taken from other contracts with the same prime contractor, rather than other contracts with the same subcontractor.

Section 5.5(a)(3)(ii) would be revised to eliminate the requirement that the contractor submit weekly a copy of all payrolls to the appropriate Federal agency, but would retain the requirement in accordance with the Copeland Act that the contractor submit weekly a certified "Statement of Compliance". After detailed review of the Copeland Act (40 U.S.C. 276c, as amended) and reconsideration of the regulation in accordance with the Paperwork Reduction Act, the Department has determined that the statutory requirement to furnish weekly a statement with respect to the wages paid each employee during the preceding week can be satisfied by a weekly submission of a statement certifying compliance. This change is in keeping with the Administration's objective of reducing reporting burdens imposed on the public, and is in recognition of the fact that the payrolls are often not examined by certain Federal agencies. However, the proposed regulation also would require that the payrolls be submitted upon request to permit agencies without on-site investigative staff to require submission on a periodic basis, or during investigations if payrolls are not available in the locality where the work is performed. To ensure the continued effectiveness of the Copeland Anti-Kickback Act, the proposed regulation makes it clear that failure to comply with this provision may be a basis for debarment.

Because of the importance the Department places on occupational training and the impact of such training



on job opportunities for youth, women, and minorities, the responsibility for approval of trainee programs under the Act is being placed at the highest level of the Department's appropriate changes and deletions are made in §§ 5.2(n)(2), 5.5(a)(4)(ii), 5.16, 5.17, and 5.18.

#### Summary of Preliminary Regulatory Impact and Regulatory Flexibility Analysis

The Department has prepared its preliminary regulatory impact analysis to identify and quantify the cost impact of the proposed changes and various alternatives that were explored and to inform the public of the economic considerations behind these proposed revisions in accordance with Executive Order 12291.

The new proposal must also consider the Regulatory Flexibility Act of 1980. This Act requires agencies to prepare regulatory flexibility analyses and to develop flexible alternatives whenever possible in drafting regulations that will have "a significant economic impact on a substantial number of small entities." The following analysis meets the requirements set forth for assessing the economic impact of the proposed changes in the Davis-Bacon regulations on small entities as required under the regulatory Flexibility Act.

**A. Cost Savings from Eliminating Weekly Payroll Submissions.** Current DOL regulations in 29 C.F.R. Part 5 require contractors to submit a statement of compliance together with a copy of the weekly payroll to assure compliance with the Copeland Act. Contractors have raised numerous concerns that the requirements for weekly submissions of payroll records imposed substantial administrative burdens on contractors, while contributing little to enforcement of the Davis-Bacon Act.

The January 16 regulation made it clear that contractors were allowed to submit payroll records in any form, thereby eliminating the costs of transcribing payroll data onto the optional government forms. The proposed regulations goes even further—eliminating payroll submissions entirely, requiring only a weekly certified "Statement of Compliance". The proposed regulation thus conforms with the recommendations of two study groups of the Commission on Government Procurement.\* The Department also considered eliminating all weekly submissions, but concluded that the Copeland act requires that contractors submit each week a

statement on the wages paid to each employee during the preceding week.

While we have made no independent estimate of the administrative costs associated with this provision due to data limitations, several estimates of the costs of compliance with Davis-Bacon and Copeland Act reporting requirements are available.

A previous DOL estimate uses a 5.5 million estimate of the annual burden hours for compliance with the Paperwork Reduction Act. Assuming a \$5.00 hourly wage rate for a bookkeeper for these burden hours, this procedure produces a \$27.5 million estimate of the costs of Davis-Bacon reporting requirements.

A second estimate comes from a 1972 survey by the Associated General Contractors of America (AGC) of its membership to estimate the administrative costs of the payroll reporting requirements of the Davis-Bacon Act. Thirty-four respondents reported estimates of administrative costs per million dollars of contract price. On the basis of this information, AGC estimated that .5 percent of the overall cost of Davis-Bacon contracts was accounted for by the payroll reporting and recordkeeping requirements. Applying this estimate to the FY 1982 estimated value of Federal construction of \$30.3 billion yields an annual cost saving of nearly \$152 million.

This study provides an upperbound estimate of the resulting cost savings since it includes other recordkeeping items such as the maintenance and storage of detailed payrolls on each employee for specified time periods and the prominent posting of wages paid each worker at their work site. However, the costs of weekly payroll submissions were certainly a large component of these administrative costs. Moreover, on the basis of GAO's estimate of about 600,000 prime and subcontracts annually, this estimate translates into about \$250 per contract, a not unreasonable estimate of the costs of compliance with this provision. GAO's estimate which is based on this survey adjusts the AGC figure downward to \$100 million to reflect the likely survey biases. This appears to be an appropriate estimate of the likely reduction in administrative costs from eliminating the weekly payroll submissions.

Much of these cost savings would be passed on to the 53,665 smaller contractors with fewer than 20 employees involved in construction work. These small contractors account for 56 percent of government contractors, but only about 15 percent of

government-owned construction receipts. Since the AGC survey indicated that administrative costs were relatively higher for these small contractors, we used both percentages to estimate the impact of eliminating weekly payroll submissions on smaller contractors. The resulting estimated cost savings to these small contractors range from \$15 million to \$56 million annually.

**B. Cost Impact of the Expanded Issuance of Semi-Skilled Classifications.** The Department has long permitted exceptions from predetermined Davis-Bacon rates set for a craft classification for apprentices and trainees who are in approved programs. The Department has also recognized a helper classification in some areas under certain well-defined situations where (1) it constitutes a separate and distinct class of workers (i.e., the scope of duties of the helper is defined and can be differentiated from journeyman duties); (2) the particular helper classification prevails in the area; and (3) the helper is not used as an informal apprentice or trainee.

During its review, the Department concluded that the current regulations regarding semi-skilled crafts do not adequately reflect local practices in the construction industry, in particular, the widespread use of helpers to perform certain craft tasks. For example, the 1976-1977 BLS survey of large metropolitan areas found that among non-union construction firms, the ratio of helpers to journeymen ranged from .35 for carpenters to .86 for bricklayers. The wage differences were also large—the average wage of helpers ranged from 58 percent (bricklayers) to 68 percent (carpenters) of that of journeymen.

The proposed regulation would expand the use of nonjourneymen in Davis-Bacon construction by issuing helper classifications on all wage determinations when they can be identified in the locality and by permitting conformance of helpers. Helpers would be broadly defined in the regulation, and permitted in a ratio of one helper to five journeymen. These changes should result in substantial cost savings by allowing contractors increased flexibility in their work assignments to use less-costly semi-skilled workers instead of journeymen.

The precise impact of the proposed changes on construction costs cannot be estimated with available data. Most importantly, while information exists on the relative wages of journeymen and helpers, there is no corresponding data on their relative productivities with which to measure the change in labor costs. As a result, we must again use

\*See GAO, *The Davis-Bacon Act Should be Repealed*, April 1979, pp. 78-82.



wage differences to proxy these construction costs differences.

The Department used a different approach to estimate the wage impact of eliminating current restrictions on the issuance of helper rates. In order to calculate the potential wage savings, we tried to predict how the proposed revisions would alter the relative demand for helpers (in place of journeymen). The estimated additional number of helpers expected on Davis-Bacon projects was multiplied by an estimate of the difference in wages paid helpers and journeymen and average hours worked annually (1535 hours) in the construction industry to derive an estimate of the aggregate wage savings.

To derive an estimate of the mix of helpers and journeymen we assumed that once the current restrictions are lifted, the ratio of helpers to journeymen on Davis-Bacon construction projects would be identical to that found overall in construction (excluding single-family residential construction). Several estimates of this ratio are available from various published sources. We used a ratio derived from BLS survey data of large metropolitan areas indicating that one helper is hired for every seventeen journeymen. However, since this particular sample is heavily unionized (in the union sector, relatively fewer helpers are utilized), we also used a 1:10 ratio as an alternative estimate.

These ratios help us calculate the additional helpers expected. Applying these ratios to the universe of current journeymen on Davis-Bacon projects (estimated at 651,000) would indicate about 38,409 (or alternatively 65,100) additional helpers on such construction, under the proposed changes. Our estimates of the resulting cost savings from increased recognition of helpers were obtained by multiplying the number of additional helpers by the average hours worked in a year (1535) and various estimates of the wage differential between helpers and journeymen from available sources. The estimated cost savings assuming a 1:17 ratio range from about \$203 million to nearly \$410 million. With the lower 1:10 ratio, the corresponding estimates range as high as \$695 million. The average estimate based on these ranges is about \$450 million.

**C. Summary.** The proposed revisions discussed above, in conjunction with the changes proposed to Part 1 of the Davis-Bacon rules (e.g. a change in the definition of "prevailing rate") will result in substantial cost savings annually of \$670 million for both contractors and the government while still assuring protection of local wage

rates and practices. The changes will have a substantial beneficial impact on small contractors.

Copies of the complete analysis may be obtained from the Deputy Administrator, Wage and Hour Division, U.S. Department of Labor, 200 Constitution Avenue N.W., Washington, D.C. 20210. The Department requests comments and additional information on all economic assumptions used in the analysis as well as any alternative suggestions designed to achieve the objectives of Executive Order 12291 at lower costs.

Accordingly, it is proposed to revise Subpart A of Part 5 as set forth below:

Signed at Washington, D.C. on this 11th day of August, 1981.

Raymond J. Donovan,  
Secretary of Labor.

Robert B. Collyer,  
Deputy Under Secretary for Employment Standards.

**PART 5—LABOR STANDARDS  
PROVISIONS APPLICABLE TO  
CONTRACTS COVERING FEDERALLY  
FINANCED AND ASSISTED  
CONSTRUCTION (ALSO LABOR  
STANDARDS PROVISIONS  
APPLICABLE TO NONCONSTRUCTION  
CONTRACTS SUBJECT TO THE  
CONTRACT WORK HOURS AND  
SAFETY STANDARDS ACT)**

**Subpart A—Davis-Bacon and Related Acts  
Provisions and Procedures**

**Sec.**

- 5.1 Purpose and scope.
- 5.2 Definitions.
- 5.3 [Reserved]
- 5.4 [Reserved]
- 5.5 Contract provisions and related matters.
- 5.6 Enforcement.
- 5.7 Reports to the Secretary of Labor.
- 5.8 Liquidated damages under the Contract Work Hours and Safety Standards Act.
- 5.9 Suspension of funds.
- 5.10 Restitution, criminal action.
- 5.11 Department of Labor hearings.
- 5.12 Debarment proceedings.
- 5.13 Rulings and interpretations.
- 5.14 Variations, tolerances, and exemptions from Parts 1 and 3 of this subtitle and this part.
- 5.15 Limitations, variations, tolerances, and exemptions under the Contract Work Hours and Safety Standards Act.
- 5.16 Training plans approved or recognized by the Department of Labor prior to August 20, 1975.
- 5.17 Withdrawal of approval of a training program.

Authority: 40 U.S.C. 276a-276a-7; 40 U.S.C. 276c; 40 U.S.C. 327-332; Reorganization Plan No. 14 of 1950, 5 U.S.C. Appendix; 5 U.S.C. 301; and the statutes listed in section 5.1(a) of this part.

**§ 5.1 Purpose and scope.**

(a) The regulations contained in this part are promulgated under the authority conferred upon the Secretary of Labor by Reorganization Plan No. 14 of 1950 and the Copeland Act in order to coordinate the administration and enforcement of the labor standards provisions of each of the following acts by the Federal agencies responsible for their administration and of such additional statutes as may from time to time confer upon the Secretary of Labor additional duties and responsibilities similar to those conferred upon the Secretary of Labor under Reorganization Plan No. 14 of 1950:

1. The Davis-Bacon Act (sec. 1-7, 46 Stat. 1949, as amended; Pub. L. 74-403, 40 U.S.C. 276a-276a-7).
2. Copeland Act (40 U.S.C. 276c).
3. The Contract Work Hours and Safety Standards Act (40 U.S.C. 327-332).
4. National Housing Act (sec. 212 added to c. 847, 48 Stat. 1246, by sec. 14, 53 Stat. 807; 12 U.S.C. 1715c and repeatedly amended).
5. Housing Act of 1950 (college housing) (amended by Housing Act of 1959 to add labor provisions, 73 Stat. 681; 12 U.S.C. 1749a(f)).
6. Housing Act of 1959 (sec. 401(f) of the Housing Act of 1950 as amended by Pub. L. 86-372, 73 Stat. 681; 12 U.S.C. 1701q(c)(3)).
7. Commercial Fisheries Research and Development Act of 1964 (sec. 7, 78 Stat. 199; 16 U.S.C. 779e(b)).
8. Library Services and Construction Act (sec. 7(a), 78 Stat. 13; 20 U.S.C. 355c(a)(4), as amended).
9. National Technical Institute for the Deaf Act (sec. 5(b)(5), 79 Stat. 126; 20 U.S.C. 684(b)(5)).
10. National Foundation on the Arts and Humanities Act of 1965 (sec. 5(k), 79 Stat. 846 as amended; 20 U.S.C. 954(j)).
11. Elementary and Secondary Education Act of 1965 as amended by Elementary and Secondary and other Education Amendments of 1969 (sec. 423 as added by Pub. L. 91-230, title IV, sec. 401(a)(10), 84 Stat. 169, and renumbered sec. 433, by Pub. L. 92-318; title III, sec. 301(a)(1), 86 Stat. 326; 20 U.S.C. 1232(b)). Under the amendment coverage is extended to all programs administered by the Commissioner of Education.
12. The Federal-Aid Highway Act of 1956 (sec. 108(b), 70 Stat. 378, recodified at 72 Stat. 895; 23 U.S.C. 113, as amended), see particularly the amendments in the Federal-Aid Highway Act of 1968 (Pub. L. 90-495, 62 Stat. 815).
13. Indian Self-Determination and Education Assistance Act (sec. 7, 88 Stat. 2205; 25 U.S.C. 450e).
14. Indian Health Care Improvement Act (sec. 303(b), 90 Stat. 1407; 25 U.S.C. 1633(b)).
15. Rehabilitation Act of 1973 (sec. 306(b)(5) 87 Stat. 384, 29 U.S.C. 776(b)(5)).
16. Comprehensive Employment and Training Act of 1973 (sec. 606, 87 Stat. 880, renumbered sec. 706 by 88 Stat. 1845; 29 U.S.C. 988; also sec. 604, 88 Stat. 1846; 29 U.S.C. 964(b)(3)).



17. State and Local Fiscal Assistance Act of 1972 (sec. 123(a)(6), 86 Stat. 933; 31 U.S.C. 1246(a)(6)).

18. Federal Water Pollution Control Act (sec. 513 of sec. 2, 86 Stat. 894; 33 U.S.C. 1372).

19. Veterans Nursing Home Care Act of 1964 (78 Stat. 502, as amended; 38 U.S.C. 5035(a)(8)).

20. Postal Reorganization Act (sec. 410(b)(4)(C); 84 Stat. 726 as amended; 39 U.S.C. 410(b)(4)(C)).

21. National Visitors Center Facilities Act of 1966 (sec. 110, 32 Stat. 45; 40 U.S.C. 808).

22. Appalachian Regional Development Act of 1965 (sec. 402, 79 Stat. 21; 40 U.S.C. App. 402).

23. Health Services Research, Health Statistics, and Medical Libraries Act of 1974 (sec. 107, see sec. 308(h)(2) thereof, 88 Stat. 370, as amended by 90 Stat. 378; 42 U.S.C. 242m(h)(2)).

24. Hospital Survey and Construction Act, as amended by the Hospital and Medical Facilities Amendments of 1964 (sec. 605(a)(5), 78 Stat. 453; 42 U.S.C. 291e(a)(5)).

25. Health Professions Educational Assistance Act (sec. 303(b), 90 Stat. 2254; 42 U.S.C. 293a(g)(1)(C); also sec. 308a, 90 Stat. 2258, 42 U.S.C. 293a(c)(7)).

26. Nurse Training Act of 1964 (sec. 941(a)(1)(C), 89 Stat. 384; 42 U.S.C. 296a(b)(5)).

27. Heart Disease, Cancer, and Stroke Amendments of 1965 (sec. 904, as added by sec. 2, 79 Stat. 928; 42 U.S.C. 299d(b)(4)).

28. Safe Drinking Water Act (sec. 2(a) see sec. 1450e thereof, 88 Stat. 1691; 42 U.S.C. 300j-9(e)).

29. National Health Planning and Resources Act (sec. 4, see sec. 1804(b)(1)(H), 88 Stat. 2261, 42 U.S.C. 300a-3(b)(1)(H)).

30. U.S. Housing Act of 1937, as amended and recodified (68 Stat. 667; 42 U.S.C. 1437j).

31. Demonstration Cities and Metropolitan Development Act of 1966 (secs. 110, 311, 503, 1003, 80 Stat. 1259, 1270, 1277, 1284; 42 U.S.C. 3310; 12 U.S.C. 1715c; 42 U.S.C. 1437j).

32. Slum clearance program: Housing Act of 1949 (sec. 109, 63 Stat. 419, as amended; 42 U.S.C. 1459).

33. Farm housing: Housing Act of 1964 (adds sec. 516(f) to Housing Act of 1949 by sec. 503, 78 Stat. 797; 42 U.S.C. 1486(f)).

34. Housing Act of 1961 (sec. 707, added by sec. 907, 79 Stat. 496, as amended; 42 U.S.C. 1500c-3).

35. Defense Housing and Community Facilities and Services Act of 1951 (sec. 310, 65 Stat. 307; 42 U.S.C. 1592i).

36. Special Health Revenue Sharing Act of 1975 (sec. 303, see sec. 222(a)(5) thereof, 89 Stat. 324; 42 U.S.C. 2689j(a)(5)).

37. Economic Opportunity Act of 1964 (sec. 607, 78 Stat. 532; 42 U.S.C. 2947).

38. Headstart, Economic Opportunity, and Community Partnership Act of 1974 (sec. 11, see sec. 811 thereof, 88 Stat. 2327; 42 U.S.C. 2992a).

39. Housing and Urban Development Act of 1965 (sec. 707, 79 Stat. 492 as amended; 42 U.S.C. 3107).

40. Older Americans Act of 1965 (sec. 502, Pub. L. 89-73, as amended by sec. 501, Pub. L. 93-29; 87 Stat. 50; 42 U.S.C. 3041a(a)(4)).

41. Public Works and Economic Development Act of 1965 (sec. 712; 79 Stat. 575 as amended; 42 U.S.C. 3222).

42. Juvenile Delinquency Prevention Act (sec. 1, 86 Stat. 536; 42 U.S.C. 3884).

43. New Communities Act of 1968 (sec. 410, 82 Stat. 516; 42 U.S.C. 3909).

44. Urban Growth and New Community Development Act of 1970 (sec. 727(f), 84 Stat. 1803; 42 U.S.C. 4529).

45. Domestic Volunteer Service Act of 1973 (sec. 406, 87 Stat. 410; 42 U.S.C. 5046).

46. Housing and Community Development Act of 1974 (secs. 110, 802(g), 88 Stat. 649, 724; 42 U.S.C. 5310, 1440(g)).

47. Developmentally Disabled Assistance and Bill of Rights Act (sec. 126(4), 89 Stat. 488; 42 U.S.C. 6042(4); title I, sec. 111, 89 Stat. 491; 42 U.S.C. 6063(b)(19)).

48. National Energy Conservation Policy Act (sec. 312, 92 Stat. 3254; 42 U.S.C. 6371j).

49. Public Works Employment Act of 1976 (sec. 109, 90 Stat. 1001; 42 U.S.C. 6708; also sec. 208, 90 Stat. 1008; 42 U.S.C. 6728).

50. Energy Conservation and Production Act (sec. 451(h), 90 Stat. 1168; 42 U.S.C. 6881(b)).

51. Solid Waste Disposal Act (sec. 2, 90 Stat. 2823; 42 U.S.C. 6979).

52. Rail Passenger Service Act of 1970 (sec. 405d, 84 Stat. 1337; 45 U.S.C. 565(d)).

53. Urban Mass Transportation Act of 1964 (sec. 10, 78 Stat. 307; renumbered sec. 13 by 88 Stat. 715; 49 U.S.C. 1609).

54. Highway Speed Ground Transportation Study (sec. 6(b), 79 Stat. 893; 49 U.S.C. 1636(b)).

55. Airport and Airway Development Act of 1970 (sec. 22(b), 84 Stat. 231; 49 U.S.C. 1722(b)).

56. Federal Civil Defense Act of 1950 (50 U.S.C. App. 2281i).

57. National Capital Transportation Act of 1965 (sec. 3(b)(4), 79 Stat. 644; 40 U.S.C. 682(b)(4). Note.—Repealed December 9, 1969, and labor standards incorporated in sec. 1-1431 of the District of Columbia Code).

58. Model Secondary School for the Deaf Act (sec. 4, 80 Stat. 1027, Pub. L. 89-694, but not in the United States Code).

59. Delaware River Basin Compact (sec. 15.1, 75 Stat. 714, Pub. L. 87-328) (considered a statute for purposes of the plan but not in the United States Code).

60. Energy Security Act (sec. 175(c), Pub. L. 96-294, 94 Stat. 611; 42 U.S.C. 8701 note).

(b) Part 1 of this subtitle contains the Department's procedural rules governing requests for wage determinations and the issuance and use of such wage determinations under the Davis-Bacon Act and its related statutes as listed in that part.

#### § 5.2 Definitions.

(a) The term "Secretary" includes the Secretary of Labor, the Deputy Under Secretary for Employment Standards, and their authorized representatives.

(b) The term "Administrator" means the Administrator of the Wage and Hour Division or the authorized representative as set forth in this part. In the absence of the Wage-Hour Administrator, the Deputy Administrator of the Wage and Hour Division, is designated to act for the

Administrator under this Part. Except as otherwise provided in this Part, the Assistant Administrator for Government Contract Wage Standards is the authorized representative of the Administrator in the administration of the statutes listed in § 5.1.

(c) The term "Federal agency" means the agency or instrumentality of the United States which enters into the contract or provides assistance through loan, grant, loan guarantee or insurance, or otherwise, to the project subject to a statute listed in § 5.1.

(d) The term "Agency Head" means the principal official of the Federal agency and includes those persons duly authorized to act in the behalf of the Agency Head.

(e) The term "Contracting Officer" means the individual, a duly appointed successor, or authorized representative who is designated and authorized to enter into contracts on behalf of the Federal agency.

(f) The term "labor standards" as used in this part means the requirements of the Davis-Bacon Act, the Contract Work Hours and Safety Standards Act (other than those relating to safety and health), the Copeland Act, and the prevailing wage provisions of the other statutes listed in § 5.1, and the regulations in Parts 1 and 3 of this subtitle and this part.

(g) The term "United States or the District of Columbia" means the United States, the District of Columbia, and all executive departments, independent establishments, administrative agencies, and instrumentalities of the United States and of the District of Columbia, including corporations, all or substantially all of the stock of which is beneficially owned by the United States, by the foregoing departments, establishments, agencies, instrumentalities, and including non-appropriated fund instrumentalities.

(h) The term "contract" means any contract in excess of \$2,000 which is subject wholly or in part to the labor standards provisions of any of the acts listed in § 5.1 and any subcontract of any tier thereunder, let under the prime contract, which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution, except where a different meaning is expressly indicated. A State or local Government is not regarded as a



contractor under statutes providing loans, grants, or other Federal assistance in situations where construction is performed by its own employees. However, under certain enabling statutes, State and local recipients of Federal-aid must pay these employees according to Davis-Bacon labor standards.

(i) The terms "building" or "work" generally include construction activity as distinguished from manufacturing, furnishing of materials, or servicing and maintenance work. The terms include without limitation, buildings, structures, and improvements of all types, such as bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, canals, dredging, shoring, rehabilitation and reactivation of plants, scaffolding, drilling, blasting, excavating, clearing, and landscaping. The manufacture or furnishing of materials, articles, supplies or equipment (whether or not a Federal or State agency acquires title to such materials, articles, supplies, or equipment during the course of the manufacture or furnishing, or owns the materials from which they are manufactured or furnished) is not a "building" or "work" within the meaning of the regulations in this part unless conducted in connection with and at the site of such a building or work as is described in the foregoing sentence, or under the United States Housing Act of 1937 and the Housing Act of 1949 in the construction or development of the project.

(j) The terms "construction", "prosecution", "completion", or "repair" mean all types of work done on a particular building or work at the site thereof or under the United States Housing Act of 1937 and the Housing Act of 1949 in the construction or development of the project, including without limitation, altering, remodeling, installation (where appropriate) on-site of items fabricated off-site, painting and decorating, the transporting of materials and supplies to or from the building or work by the employees of the construction contractor or construction subcontractor, and the manufacturing or furnishing of materials, articles, supplies or equipment on the site of the building or work (or under the United States Housing Act of 1937 and the Housing Act of 1949 in the construction or development of the project), by persons employed by the contractor or subcontractor. However, the term

"initial construction" in section 113 of Title 23, U.S.C., which pertains to Federal-aid highway work, does not include repair or maintenance work.

(k) The term "public building" or "public work" includes building or work, the construction, prosecution, completion, or repair of which, as defined above, is carried on directly by authority of or with funds of a Federal agency to serve the interest of the general public regardless of whether title thereof is in a Federal agency.

(l) The term "site of the work" is defined as follows:

(1) The "site of the work" is limited to the physical place or places where the construction called for in the contract will remain when work on it has been completed and, as discussed in paragraph (l)(2) of this section other adjacent or nearby property used by the contractor or subcontractor in such construction which can reasonably be said to be included in the "site" because of its proximity.

(2) Fabrication Plants, "mobile factories," batch plants, borrow pits, job headquarters, tool yards, etc., are part of the "site of the work" provided they are dedicated exclusively, or nearly so, to performance of the contract or project and are so located in proximity to the actual construction location that it would be reasonable to include them.

(3) Not included in the "site of the work" are permanent home offices or branch plant establishments of a contractor or subcontractor, its fabrication plant and tool yard establishments, whose locations and continuance are governed by its general business operations. Such previously established facilities are not a part of the "site of the work", even where the operations for a period of time may be dedicated exclusively, or nearly so, to the performance of a contract.

(m) The term "laborer" or "mechanic" includes at least those workers whose duties are manual or physical in nature (including those workers who use tools or who are performing the work of a trade), as distinguished from mental or managerial. The term "laborer" or "mechanic" includes apprentices, trainees, helpers, and, in the case of contracts subject to the Contract Work Hours and Safety Standards Act, watchmen or guards. The term does not apply to workers whose duties are primarily administrative, executive, or clerical, rather than manual. Persons employed in a bona fide executive, administrative, or professional capacity as defined in Part 541 of this title are not deemed to be laborers or mechanics. Working foremen who devote more than 20 percent of their time during a

workweek to mechanic or laborer duties, and who do not meet the criteria of Part 541, are laborers and mechanics for the time so spent.

(n) The terms apprentice, trainee, and helper are defined as follows:

(1) "Apprentice" means (i) a person employed and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or (ii) a person in the first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice;

(2) "Trainee" means a person registered and receiving on-the-job training in a construction occupation under a program which has been approved in advance by the U.S. Department of Labor, Employment and Training Administration, as meeting its standards for on-the-job training programs and which has been so certified by that Administration.

(3) These provisions do not apply to "apprentices" and "trainees" employed on projects subject to 23 U.S.C. 113 who are enrolled in programs which have been certified by the Secretary of Transportation in accordance with 23 U.S.C. 113(c).

(4) A "helper" is a semi-skilled worker (rather than a skilled journeyman mechanic) who works under the direction of and assists a journeyman. Under the journeyman's direction and supervision, the helper performs a variety of duties to assist the journeyman such as preparing, carrying, and furnishing materials, tools, equipment, and supplies and maintaining them in order; cleaning and preparing work areas; lifting, positioning, and holding materials or tools; and other related, semi-skilled tasks as directed by the journeyman. A helper may use tools of the trade at and under the direction and supervision of the journeyman. The particular duties performed by a helper vary according to area practice.

(o) Every person performing the duties of a laborer or mechanic in the construction, prosecution, completion, or repair of a public building or public work, or building or work financed in whole or in part by loans, grants, or



guarantees from the United States is "employed" regardless of any contractual relationship alleged to exist between the contractor or such person.

(p) The term "wages" means the basic hourly rate of pay; any contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a bona fide fringe benefit fund, plan, or program; and the rate of costs to the contractor or subcontractor which may be reasonably anticipated in providing bona fide fringe benefits to laborers and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan or program, which was communicated in writing to the laborers and mechanics affected. The fringe benefits enumerated in the Davis-Bacon Act include medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing; unemployment benefits; life insurance, disability insurance, sickness insurance, or accident insurance; vacation or holiday pay; defraying costs of apprenticeship or other similar programs; or other bona fide fringe benefits. Fringe benefits do not include benefits required by other Federal, State, or local law.

(q) The term "wage determination" includes the original decision and any subsequent decisions modifying, superseding, correcting, or otherwise changing the provisions of the original decision. The application of the wage determination shall be in accordance with the provisions of § 1.6 of this title.

#### §§ 5.3-5.4 [Reserved]

#### § 5.5 Contract provisions and related matters.

(a) The Agency head shall cause or require the contracting officer to insert in full in any contract subject to the labor standards provisions of any of the acts listed in § 5.1, except those subject only to the Contract Work Hours and Safety Standards Act, the following clauses (or any modifications thereof to meet the particular needs of the agency: *Provided*, That such modifications are first approved by the Department of Labor):

(1) *Minimum wages.* (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such

payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to the skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

(I) Except with respect to helpers as defined in 29 CFR 5.2(n)(4), work to be performed by the classification requested is not performed by a

classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, agree with the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will respond within 30 days of receipt thereof and will approve, reverse, or modify every additional classification action.

(C) In the event the contractor, or the laborers or mechanics to be employed in the classification or their representatives, do not agree with the contracting officer on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt unless notice is otherwise furnished to the contracting agency within the 30 day period.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(B) or (C) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing



bona fide fringe benefits under a plan or program. *Provided*, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) *Withholding*. The (write in name of Federal Agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices and trainees, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice or trainee, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) *Payrolls and basic records*. (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of

any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a "Statement of Compliance" to the (write in name of appropriate Federal agency) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the "Statement of Compliance" to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency). The prime contractor is responsible for the submission of the "Statement of Compliance" by all subcontractors.

(B) Each "Statement of Compliance" shall be signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be maintained under § 5.5(a)(3)(i) of Regulations, 29 CFR Part 5 and that such information is correct and complete;

(2) That all laborers or mechanics (including helpers, apprentices, and trainees) employed on the contract during the payroll period have been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR Part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents on the wage determination incorporated into the contract for the classification of work performed.

(C) The willful falsification of any of the above certifications may subject the contractor or subcontractor to civil or

criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

(iii) The contractor or subcontractor, upon request of the authorized representatives of the (write the name of the agency) or the Department of Labor, shall submit the records required under paragraph (a)(3)(i) of this section, shall make them available for inspection, copying, or transcription by such representatives and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) *Apprentices, trainees, and helpers*—(i) *Apprentices*. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the



work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) *Trainees.* Except as provided in 29 CFR 5.16 trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage

rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) *Equal employment opportunity.* The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

(iv) *Helpers.* Helpers will be permitted to work on a project if the helper classification is specified on an applicable wage determination or is approved pursuant to the conformance procedure set forth in § 5.5 (a)(1)(ii). Unless otherwise specified on an applicable wage determination, the allowable ratio of helpers to journeymen on the job site in any classification shall not be greater than one helper to five journeymen. Any worker listed on a payroll at a helper wage rate, who is not a helper as defined in 29 CFR 5.2(n)(4), shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any helper performing work on the job site in excess of the ratio permitted shall be paid not less than the applicable journeyman's (or laborer's, where appropriate) wage rate on the wage determination for the work actually performed.

(5) *Compliance with Copeland Act requirements.* The contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this contract.

(6) *Subcontracts.* The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the (write in the name of the Federal agency) may be appropriate instructions require, and also a clause requiring the subcontractors to include

these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) *Contract termination; debarment.* A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) *Compliance with Davis-Bacon and Related Act requirements.* All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) *Disputes concerning labor standards.* Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) *Certification of Eligibility.* (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(b) *Contract Work Hours and Safety Standards Act.* The Agency Head shall cause or require the contracting officer to insert the following clauses set forth in paragraphs (b)(1), (2), (3), and (4) of this section in full in any contract subject to the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by § 5.5(a) or § 4.6 of Part 4 of this title. As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.

(1) *Overtime requirements.* No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or



permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of eight hours in any calendar day or in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of eight hours in any calendar day or in excess of forty hours in such workweek, whichever is greater.

(2) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the clause set forth in subparagraph (1) of this paragraph, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subparagraph (1) of this paragraph, in the sum of \$10 for each calendar day or which such individual was required or permitted to work in excess of eight hours or in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in subparagraph (1) of this paragraph.

(3) *Withholding for unpaid wages and liquidated damages.* The (write in the name of the Federal agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (2) of this paragraph.

(4) *Subcontracts.* The contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraphs (1) through (4) of this paragraph and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier

subcontractor with the clauses set forth in subparagraphs (1) through (4) of this paragraph.

(c) In addition to the clauses contained in paragraph (b), in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in § 5.1, the Agency Head shall cause or require the contracting officer to insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Agency Head shall cause or require the contracting officer to insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

#### § 5.6 Enforcement.

(a)(1) It shall be the responsibility of the Federal agency to ascertain whether the clauses required by § 5.5 have been inserted in the contracts subject to the labor standards provisions of the Acts contained in § 5.1. Agencies which do not directly enter into such contracts shall promulgate the necessary regulations or procedures to require the recipient of the Federal assistance to insert in its contracts the provisions of § 5.5. No payment, advance, grant, loan, or guarantee of funds shall be approved by the Federal agency unless the agency insures that the clauses required by § 5.5 and the appropriate wage determination of the Secretary of Labor are contained in such contracts. Furthermore, no payment, advance, grant, loan, or guarantee of funds shall be approved by the Federal agency after the beginning of construction unless there is on file with the agency a certification by the contractor that the contractor and its subcontractors have complied with the provisions of § 5.5 or unless there is on file with the agency a certification by the contractor that there is a substantial

dispute with respect to the required provisions.

(2) Statements of Compliance submitted pursuant to § 5.5(a)(3)(ii) shall be preserved by the Federal agency for a period of 3 years from the date of completion of the contract and shall be produced at the request of the Department of Labor at any time during the 3-year period.

(3) The Federal agency shall cause such investigations to be made as may be necessary to assure compliance with the labor standards clauses required by § 5.5 and the applicable statutes listed in § 5.1. Investigations shall be made of all contracts with such frequency as may be necessary to assure compliance. Such investigations shall include interviews with employees, which shall be taken in confidence, and examinations of payroll data and evidence of registration and certification with respect to apprenticeship and training plans. In making such examinations, particular care shall be taken to determine the correctness of classifications and to determine whether there is a disproportionate employment of laborers, of helpers where they are listed on the wage determination, or conformed under § 5.5(a)(1)(ii), and of apprentices or trainees registered in approved programs. Such investigations shall also include evidence of fringe benefit plans and payments thereunder. Complaints of alleged violations shall be given priority.

(4) In accordance with normal operating procedures, the contracting agency may be furnished various investigatory material from the investigation files of the Department of Labor. None of the material, other than computations of back wages and liquidated damages and the summary of back wages due, may be disclosed in any manner to anyone other than Federal officials charged with administering the contract or program providing Federal assistance to the contract, without requesting the permission and views of the Department of Labor.

(5) It is the policy of the Department of Labor to protect the identity of its confidential sources and to prevent an unwarranted invasion of personal privacy. Accordingly, the identity of an employee who makes a written or oral statement as a complaint or in the course of an investigation, as well as portions of the statement which would reveal the employee's identity, shall not be disclosed in any manner to anyone other than Federal officials without the prior consent of the employee. Disclosure of employee statements shall



be governed by the provisions of the "Freedom of Information Act" (5 U.S.C. 552, see 29 CFR Part 70) and the "Privacy Act of 1974" (5 U.S.C. 552a).

(b) The Administrator shall cause to be made such investigations as deemed necessary, in order to obtain compliance with the labor standards provisions of the applicable statutes listed in § 5.1, or to affirm or reject the recommendations by the Agency Head with respect to labor standards matters arising under the statutes listed in § 5.1. Federal agencies, contractors, subcontractors, sponsors, applicants, or owners shall cooperate with any authorized representative of the Department of Labor in the inspection of records, in interviews with workers, and in all other aspects of the investigations. The findings of such an investigation, including amounts found due, may not be altered or reduced without the approval of the Department of Labor. Where the underpayments disclosed by such an investigation total \$1,000 or more, where there is reason to believe that the violations are aggravated or willful (or, in the case of the Davis-Bacon Act, that the contractor has disregarded its obligations to employees and subcontractors), or where liquidated damages may be assessed under the Contract Work Hours and Safety Standards Act, the Department of Labor will furnish the Federal agency an enforcement report detailing the labor standards violations disclosed by the investigation and any action taken by the contractor to correct the violative practices, including any payment of back wages. In other circumstances, the Federal agency will be furnished a letter of notification summarizing the findings of the investigation.

#### § 5.7 Reports to the Secretary of Labor.

(a) *Enforcement reports.* (1) Where underpayments by a contractor or subcontractor total less than \$1,000, and where there is no reason to believe that the violations are aggravated or willful (or, in the case of the Davis-Bacon Act, that the contractor has disregarded its obligations to employees and subcontractors), and where restitution has been effected and future compliance assured, the Federal agency need not submit its investigative findings and recommendations to the Administrator, unless the investigation was made at the request of the Department of Labor. In the latter case, the Federal agency shall submit a factual summary report detailing any violations including any data on the amount of restitution paid, the number of workers who received restitution, liquidated damages assessed under the Contract Work Hours and

Safety Standards Act, corrective measures taken (such as "letters of notice"), and any information that may be necessary to review any recommendations for an appropriate adjustment in liquidated damages under § 5.8.

(2) Where underpayments by a contractor or subcontractor total \$1,000 or more, or where there is reason to believe that the violations are aggravated or willful (or, in the case of the Davis-Bacon Act, that the contractor has disregarded its obligations to employees and subcontractors), the Federal agency shall furnish within 60 days after completion of its investigation, a detailed enforcement report to the Administrator.

(b) *Semi-annual enforcement reports.* To assist the Secretary in fulfilling the responsibilities under Reorganization Plan No. 14 of 1950, Federal agencies shall furnish to the Administrator by April 30 and October 31 of each calendar year semi-annual reports on compliance with and enforcement of the labor standards provisions of the Davis-Bacon Act and its related acts covering the periods of October 1 through March 31 and April 1 through September 30, respectively. Such reports shall be prepared in the manner prescribed in memoranda issued to Federal agencies by the Administrator. This report has been cleared in accordance with FPMR 101-11.11 and assigned interagency report control number 1482-DOL-SA.

(c) *Additional information.* Upon request, the Agency Head shall transmit to the Administrator such information available to the Agency with respect to contractors and subcontractors, their contracts, and the nature of the contract work as the Administrator may find necessary for the performance of his or her duties with respect to the labor standards provisions referred to in this part.

(d) *Contract termination.* Where a contract is terminated by reason of violations of the labor standards provisions of the statutes listed in § 5.1, a report shall be submitted promptly to the Administrator and to the Comptroller General (if the contract is subject to the Davis-Bacon Act) giving the name and address of the contractor or subcontractor whose right to proceed has been terminated, and the name and address of the contractor or subcontractor, if any, who is to complete the work, the amount and number of the contract, and the description of the work to be performed.

#### § 5.8 Liquidated damages under the Contract Work Hours and Safety Standards Act.

(a) The Contract Work Hours and Safety Standards Act requires that laborers or mechanics shall be paid wages at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of eight hours in any calendar day or forty hours in any work week. In the event of violation of this provision, the contractor and any subcontractor shall be liable for the unpaid wages and in addition for liquidated damages, computed with respect to each laborer or mechanic employed in violation of the Act, of \$10, for each calendar day or workweek in which such individual was required or permitted to work without payment of required overtime wages. Any contractor or subcontractor aggrieved by the withholding of liquidated damages shall have the right to appeal to the head of the agency of the United States (or the territory or District of Columbia, as appropriate) for which the contract work was performed or for which financial assistance was provided.

(b) *Findings and recommendations of the Agency Head.* The Agency Head has the authority to review the administrative determination of liquidated damages and to issue a final order affirming the determination. It is not necessary to seek the concurrence of the Administrator but the Administration shall be advised of the action taken. Whenever the Agency Head finds that a sum of liquidated damages administratively determined to be due is incorrect or that the contractor or subcontractor violated inadvertently the provisions of the Act notwithstanding the exercise of due care upon the part of the contractor or subcontractor involved, and the amount of the liquidated damages computed for the contract is in excess of \$500, the Agency Head may make recommendations to the Secretary that an appropriate adjustment in liquidated damages be made or that the contractor or subcontractor be relieved of liability for such liquidated damages. Such findings with respect to liquidated damages shall include findings with respect to any wage underpayments for which the liquidated damages are determined.

(c) The recommendations of the Agency Head for adjustment or relief from liquidated damages under paragraph (a) of this section shall be reviewed by the Administrator or an authorized representative who shall issue an order concurring in the



recommendations, partially concurring in the recommendations, or rejecting the recommendations, and the reasons therefor. The order shall be the final decision of the Department of Labor, unless a petition for review is filed pursuant to Part 7 of this title, and the Wage Appeals Board in its discretion reviews such decision and order; or, with respect to contracts subject to the Service Contract Act, unless petition for review is filed pursuant to Part 8 of this title, and the Board of Service Contract Appeals in its discretion reviews such decision and order.

(d) Whenever the Agency Head finds that a sum of liquidated damages administratively determined to be due under section 104(a) of the Contract Work Hours and Safety Standards Act for a contract is \$500 or less and the Agency Head finds that the sum of liquidated damages is incorrect or that the contractor or subcontractor violated inadvertently the provisions of the Contract Work Hours and Safety Standards Act notwithstanding the exercise of due care upon the part of the contractor or subcontractor involved, an appropriate adjustment may be made in such liquidated damages or the contractor or subcontractor may be relieved of liability for such liquidated damages without submitting recommendations to this effect or a report to the Department of Labor. This delegation of authority is made under section 105 of the Contract Work Hours and Safety Standards Act and has been found to be necessary and proper in the public interest to prevent undue hardship and to avoid serious impairment of the conduct of Government business.

#### § 5.9 Suspension of funds.

In the event of failure or refusal of the contractor or any subcontractor to comply with the labor standards clauses contained in § 5.5 and the applicable statutes listed in § 5.1, the Federal agency, upon its own action or upon written request of an authorized representative of the Department of Labor, shall take such action as may be necessary to cause the suspension of the payment, advance or guarantee of funds until such time as the violations are discontinued or until sufficient funds are withheld to compensate employees for the wages to which they are entitled and to cover any liquidated damages which may be due.

#### § 5.10 Restitution, criminal action.

(a) In cases other than those forwarded to the Attorney General of the United States under paragraph (b), of this section, where violations of the

labor standards clauses contained in § 5.5 and the applicable statutes listed in § 5.1 result in underpayment of wages to employees, the Federal agency or an authorized representative of the Department of Labor shall request that restitution be made to such employees or on their behalf to plans, funds, or programs for any type of bona fide fringe benefits within the meaning of section 1(b)(2) of the Davis-Bacon Act.

(b) In cases where the Agency Head or the Administrator finds substantial evidence that such violations are willful and in violation of a criminal statute, the payment of wage underpayments shall not be requested and the matter shall be forwarded to the Attorney General of the United States for prosecution if the facts warrant. In all such cases the Administrator shall be informed simultaneously of the action taken.

#### § 5.11 Disputes concerning payment of wages.

(a) This section sets forth the procedure for resolution of disputes of fact or law concerning payment of prevailing wage rates, overtime pay, or proper classification. The procedures in this section may be initiated upon the Administrator's own motion, upon referral of the dispute by a Federal agency pursuant to § 5.5(a)(9), or upon request of the contractor or subcontractor(s).

(b)(1) In the event of a dispute described in paragraph (a) of this section in which it appears that relevant facts are at issue, the Administrator will notify the affected contractor and subcontractor(s) (if any), by registered or certified mail to the last known address, of the investigation findings. If the Administrator determines that there is reasonable cause to believe that the contractor and/or subcontractor(s) should also be subject to debarment under the Davis-Bacon Act or § 5.12(a)(1), the letter will so indicate.

(2) A contractor and/or subcontractor desiring a hearing concerning the Administrator's investigative findings shall request such a hearing by letter postmarked within 30 days of the date of the Administrator's letter. The request shall set forth those findings which are in dispute and the reasons therefore, including any affirmative defenses, with respect to the violations and/or debarment, as appropriate.

(3) Upon receipt of a timely request for a hearing, the Administrator shall refer the case to the Chief Administrative Law Judge by Order of Reference, to which shall be attached a copy of the letter from the Administrator and response thereto, for designation of an Administrative Law Judge to conduct

such hearings as may be necessary to resolve the disputed matters. The hearing shall be conducted in accordance with the procedures set forth in 29 CFR Part 6.

(c)(1) In the event of a dispute described in paragraph (a) of this section in which it appears that there are no relevant facts at issue, and where there is not at that time reasonable cause to institute debarment proceedings under § 5.12, the Administrator shall notify the contractor and subcontractor(s) (if any), by registered or certified mail to the last known address, of the investigation findings, and shall issue a ruling on any issues of law known to be in dispute.

(2)(i) If the contractor and/or subcontractor(s) disagree with the factual findings of the Administrator or believe that there are relevant facts in dispute, the contractor or subcontractor(s) shall so advise the Administrator by letter postmarked within 30 days of the date of the Administrator's letter. In the response, the contractor and/or subcontractor(s) shall explain in detail the facts alleged to be in dispute and attach any supporting documentation.

(ii) Upon receipt of a response under paragraph (c)(1)(i) of this section alleging the existence of a factual dispute, the Administrator shall examine the information submitted. If the Administrator determines that there is a relevant issue of fact, the Administrator shall refer the case to the Chief Administrative Law Judge in accordance with paragraph (b)(3) of this section. If the Administrator determines that there is no relevant issue of fact, the Administrator shall so rule and advise the contractor and subcontractor(s) (if any) accordingly.

(3) If the contractor and/or subcontractor(s) desire review of the ruling issued by the Administrator under paragraphs (c)(1) or (2) of this section, the contractor and/or subcontractor(s) shall file a petition for review thereof with the Wage Appeals Board within 30 days of the date of the ruling, with a copy thereof to the Administrator. The petition for review shall be filed in accordance with Part 7 of this title.

(d) If a timely response to the Administrator's findings or ruling is not made or a timely petition for review is not filed, the Administrator's findings and/or ruling shall be final, except that with respect to debarment under the Davis-Bacon Act, the Administrator shall advise the Comptroller General of the Administrator's recommendation in accordance with § 5.12(a)(1). If a timely response or petition for review is filed,



the findings and/or ruling of the Administrator shall be inoperative unless and until the decision is upheld by the Administrative Law Judge or the Wage Appeals Board.

#### § 5.12 Debarment proceedings.

(a)(1) Whenever any contractor or subcontractor is found by the Secretary of Labor to be in aggravated or willful violation of the labor standards provisions of any of the applicable statutes listed in § 5.1, other than the Davis-Bacon Act, such contractor or subcontractor or any firm, corporation, partnership, or association in which such contractor or subcontractor has a substantial interest shall be ineligible for a period not to exceed 3 years (from the date of publication by the Comptroller General of the name or names of said contractor or subcontractor on the ineligible list as provided below) to receive any contracts or subcontracts subject to any of the statutes listed in § 5.1.

(2) In cases arising under contracts covered by the Davis-Bacon Act, the Administrator shall transmit to the Comptroller General the names of the contractors or subcontractors and their responsible officers, if any (and any firms in which the contractors or subcontractors are known to have an interest), who have been found to have disregarded their obligations to employees, and the recommendation of the Secretary of Labor or authorized representative regarding debarment. The Comptroller General will distribute a list to all Federal agencies giving the names of such ineligible person or firms, who shall be ineligible to be awarded any contract or subcontract of the United States or the District of Columbia and any contract or subcontract subject to the labor standards provisions of the statutes listed in § 5.1.

(b)(1) In addition to cases under which debarment action is initiated pursuant to § 5.11, whenever as a result of an investigation conducted by the Federal agency or the Department of Labor, and where the Administrator finds reasonable cause to believe that a contractor or subcontractor has committed willful or aggravated violations of the labor standards provisions of any of the statutes listed in § 5.1 (other than the Davis-Bacon Act), or has committed violations of the Davis-Bacon Act which constitute a disregard of its obligations to employees or subcontractors under section 3(a) thereof, the Administrator shall notify by registered or certified mail to the last known address, the contractor or subcontractor and its responsible officers, if any (and any firms in which

the contractor or subcontractor are known to have a substantial interest), of the finding. The Administrator shall afford such contractor or subcontractor and any other parties notified an opportunity for a hearing as to whether debarment action should be taken under paragraph (a)(1) of this section or section 3(a) of the Davis-Bacon Act. The Administrator shall furnish to those notified a summary of the investigative findings. If the contractor or subcontractor or any other parties notified wish to request a hearing as to whether debarment action should be taken, such a request shall be made by letter postmarked within 30 days of the date of the letter from the Administrator, and shall set forth any findings which are in dispute and the reasons therefor, including any affirmative defenses to be raised. Upon receipt of such request for a hearing, the Administrator shall refer the case to the Chief Administrative Law Judge by Order of Reference, to which shall be attached a copy of the letter from the Administrator and the response thereto, for designation of an Administrative Law Judge to conduct such hearings as may be necessary to determine the matters in dispute. In considering debarment under any of the statutes listed in § 5.1 other than the Davis-Bacon Act, the Administrative Law Judge shall issue an order concerning whether the contractor or subcontractor is to be debarred in accordance with paragraph (a)(1) of this section. In considering debarment under the Davis-Bacon Act, the Administrative Law Judge shall issue a recommendation as to whether the contractor or subcontractor should be debarred under section 3(a) of the Act.

(2) Hearings under this section shall be conducted in accordance with 29 CFR Part 6. If no hearing is requested within 30 days of receipt of the letter from the Administrator, the Administrator's findings shall be final, except with respect to recommendations regarding debarment under the Davis-Bacon Act, as set forth in paragraph (a)(2) of this section.

(c) Any person or firm debarred under § 5.12(a)(1) may in writing request removal from the debarment list after six months from the date of publication by the Comptroller General of such person or firm's name on the ineligible list. Such a request should be directed to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210, and shall contain a full explanation of the reasons why such person or firm should be removed from the ineligible list. In

cases where the contractor or subcontractor failed to make full restitution to all underpaid employees, a request for removal will not be considered until such underpayments are made. In all other cases, the Administrator will examine the facts and circumstances surrounding the violative practices which caused the debarment, and issue a decision as to whether or not such person or firm has demonstrated a current responsibility to comply with the labor standards provisions of the statutes listed in § 5.1, and therefore should be removed from the ineligible list. Among the factors to be considered in reaching such a decision are the severity of the violations, the contractor or subcontractor's attitude towards compliance, and the past compliance history of the firm. In no case will such removal be effected unless the Administrator determines after an investigation that such person or firm is in compliance with the labor standards provisions applicable to Federal contracts and Federally assisted construction work subject to any of the applicable statutes listed in § 5.1 and other labor statutes providing wage protection, such as the Service Contract Act, the Walsh-Healey Public Contracts Act, and the Fair Labor Standards Act. If the request for removal is denied, the person or firm may petition for review by the Wage Appeals Board pursuant to 29 CFR Part 7.

(d)(1) Section 3(a) of the Davis-Bacon Act provides that for a period of three years from date of publication on the ineligible list, no contract shall be awarded to any persons or firms placed on the list as a result of a finding by the Comptroller General that such persons or firms have disregarded obligations to employees and subcontractors, and further, that no contract shall be awarded to "any firm, corporation, partnership, or association in which such persons or firms have an interest." Paragraph (a)(1) of this section similarly provides that contracts subject to any of the statutes listed in § 5.1 (other than the Davis-Bacon Act) shall not be awarded to "any firm, corporation, partnership, or association" in which a contractor or subcontractor on the ineligible list pursuant to that paragraph has a "substantial interest." A finding as to whether persons or firms whose names appear on the ineligible list have an interest (or a substantial interest, as appropriate) in any other firm, corporation, partnership, or association, may be made through investigation, hearing, or otherwise.



(2)(i) The Administrator, on his/her own motion or after receipt of a request for a determination pursuant to paragraph (d)(3) of this section may make a finding on the issue of interest (or substantial interest, as appropriate).

(ii) If the Administrator determines that there may be an interest (or substantial interest, as appropriate), but finds that there is insufficient evidence to render a final ruling thereon, the Administrator may refer the issue to the Chief Administrative Law Judge in accordance with paragraph (d)(4) of this section.

(iii) If the Administrator finds that no interest (or substantial interest, as appropriate) exists, or that there is not sufficient information to warrant the initiation of an investigation, the requesting party, if any, will be so notified and no further action taken.

(iv)(A) If the Administrator finds that an interest (or substantial interest, as appropriate) exists, the person or firm affected will be notified of the Administrator's finding (by certified mail to the last known address), which shall include the reasons therefor, and such person or firm shall be afforded an opportunity to request that a hearing be held to render a decision on the issue.

(B) Such person or firm shall have 20 days from the date of the Administrator's ruling to request a hearing. A detailed statement of the reasons why the Administrator's ruling is in error, including facts alleged to be in dispute, if any, shall be submitted with the request for a hearing.

(C) If no hearing is requested within the time mentioned in paragraph (d)(2)(iv)(B) of this section, the Administrator's finding shall be final and the Administrator shall so notify the Comptroller General. If a hearing is requested, the ruling of the Administrator shall be inoperative unless and until the administrative law judge or the Wage Appeals Board issues an order that there is an interest (or substantial interest, as appropriate).

(3)(i) A request for a determination of interest (or substantial interest, as appropriate), may be made by any interested party, including contractors or prospective contractors and associations of contractors, representatives of employees, and interested Government agencies. Such a request shall be submitted in writing to the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210, to the attention of the Office of Government Contract Wage Standards.

(ii) The request shall include a statement setting forth in detail why the

petitioner believes that a person or firm whose name appears on the debarred bidders list has an interest (or a substantial interest, as appropriate) in any firm, corporation, partnership, or association which is seeking or has been awarded a contract of the United States or the District of Columbia, or which is subject to any of the statutes listed in § 5.1. No particular form is prescribed for the submission of a request under this section.

(4) *Referral to the Chief Administrative Law Judge.* The Administrator, on his/her own motion under paragraph (d)(2)(ii) of this section or upon a request for hearing where the Administrator determines that relevant facts are in dispute, will by order refer the issue to the Chief Administrative Law Judge, for designation of an Administrative Law Judge who shall conduct such hearings as may be necessary to render a decision solely on the issue of interest (or substantial interest, as appropriate). Such proceedings shall be conducted in accordance with the procedures set forth at 29 CFR Part 6.

(5) *Referral to the Wage Appeals Board.* If the person or firm affected requests a hearing and the Administrator determines that relevant facts are not in dispute, the Administrator will refer the issue and the record compiled thereon to the Wage Appeals Board to render a decision solely on the issue of interest (or substantial interest, as appropriate). Such proceeding shall be conducted in accordance with the procedures set forth at 29 CFR Part 7.

#### § 5.13 Rulings and interpretations.

All questions relating to the application and interpretation of wage determinations (including the classifications therein) issued pursuant to Part 1 of this subtitle, of the rules contained in this part and in Parts 1 and 3, and of the labor standards provisions of any of the statutes listed in § 5.1 shall be referred to the Administrator for appropriate ruling or interpretation. The rulings and interpretations shall be authoritative and those under the Davis-Bacon Act may be relied upon as provided for in section 10 of the Portal-to-Portal Act of 1947 (29 U.S.C. 259). Requests for such rulings and interpretations should be addressed to the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210.

#### § 5.14 Variations, tolerances, and exemptions from Parts 1 and 3 of this subtitle and this part.

The Secretary of Labor may make variations, tolerances, and exemptions from the regulatory requirements of this part and those of Parts 1 and 3 of this subtitle whenever the Secretary finds that such action is necessary and proper in the public interest or to prevent injustice and undue hardship. Variations, tolerances, and exemptions may not be made from the statutory requirements of any of the statutes listed in § 5.1 unless the statute specifically provides such authority.

#### § 5.15 Limitations, variations, tolerances, and exemptions under the Contract Work Hours and Safety Standards Act.

(a) *General.* Upon his or her own initiative or upon the request of any Federal agency, the Secretary of Labor may provide under section 105 of the Contract Work Hours and Safety Standards Act reasonable limitations and allow variations, tolerances, and exemptions to and from any or all provisions of that Act whenever the Secretary finds such action to be necessary and proper in the public interest to prevent injustice, or undue hardship, or to avoid serious impairment of the conduct of Government business. Any request for such action by the Secretary shall be submitted in writing, and shall set forth the reasons for which the request is made.

(b) *Exemptions.* Pursuant to section 105 of the Contract Work Hours and Safety Standards Act, the following classes of contracts are found exempt from all provisions of that Act in order to prevent injustice, undue hardship, or serious impairment of Government business:

(1) Contracts of \$2,000.00 or less.  
(2) Purchases and contracts other than construction contracts in the aggregate amount of \$2,500.00 or less. In arriving at the aggregate amount involved, there must be included all property and services which would properly be grouped together in a single transaction and which would be included in a single advertisement for bids if the procurement were being effected by formal advertising.

(3) Contract work performed in a workplace within a foreign country or within territory under the jurisdiction of the United States other than the following: A State of the United States; the District of Columbia; Puerto Rico; the Virgin Islands; Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act (ch. 345, 67 Stat. 462); American Samoa; Guam;



Wake Island; Eniwetok Atoll; Kwajalein Atoll; and Johnston Island;

(4) Agreements entered into by or on behalf of the Commodity Credit Corporation providing for the storing in or handling by commercial warehouses of wheat, corn, oats, barley, rye, grain sorghums, soybeans, flaxseed, rice, naval stores, tobacco, peanuts, dry beans, seeds, cotton, and wool.

(5) Sales of surplus power by the Tennessee Valley Authority to States, counties, municipalities, cooperative organization of citizens or farmers, corporations and other individuals pursuant to section 10 of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 8311).

(c) *Tolerances.* (1) The "basic rate of pay" under section 102 of the Contract Work Hours and Safety Standards Act may be computed as an hourly equivalent to the rate on which time-and-one-half overtime compensation may be computed and paid under section 7 of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 207), as interpreted in Part 778 of this title. This tolerance is found to be necessary and proper in the public interest in order to prevent undue hardship.

(2) Concerning the tolerance provided in paragraph (c)(1) of this section, the provisions of section 7(d)(2) of the Fair Labor Standards Act and § 778.7 of this title should be noted. Under these provisions, payments for occasional periods when no work is performed, due to vacations, and similar causes are excludable from the "regular rate" under the Fair Labor Standards Act. Such payments, therefore, are also excludable from the "basic rate" under the Contract Work Hours and Safety Standards Act.

(3) See § 5.8(c) providing a tolerance subdelegating authority to the heads of agencies to make appropriate adjustments in the assessment of liquidated damages totaling \$500 or less under specified circumstances.

(4)(i) Time spent in an organized program of related, supplemental instruction by laborers or mechanics employed under bona fide apprenticeship or training programs may be excluded from working time if the criteria prescribed in paragraphs (c)(4)(ii) and (iii) of this section are met.

(ii) The apprentice or trainee comes within the definition contained in § 5.2(n).

(iii) The time in question does not involve productive work or performance of the apprentice's or trainee's regular duties.

(d) *Variations.* (1) In order to prevent undue hardship, a workday consisting of a fixed and recurring 24-hour period commencing at the same time on each

calendar day may be used in lieu of the calendar day in applying the daily overtime provisions of the Act to the employment of firefighters or fireguards, under the following conditions: (i) Where such employment is under a platoon system requiring such employees to remain at or within the confines of their post of duty in excess of 8 hours per day in a standby or on-call status; and (ii) if the use of such alternate 24-hour day has been agreed upon between the employer and such employees or their authorized representatives before performance of the work; and (iii) provided that, in determining the daily and the weekly overtime requirements of the Act in any particular workweek of any such employee whose established workweek begins at an hour of the calendar day different from the hour when such agreed 24-hour day commences, the hours worked in excess of 8 hours in any such 24-hour day shall be counted in the established workweek (of 168 hours commencing at the same time each week) in which such hours are actually worked.

(2) In the event of failure or refusal of the contractor or any subcontractor to comply with overtime pay requirements of the Contract Work Hours and Safety Standards Act, if the funds withheld by Federal agencies for the violations are not sufficient to pay fully both the unpaid wages due laborers and mechanics and the liquidated damages due the United States, the available funds shall be used first to compensate the laborers and mechanics for the wages to which they are entitled (or an equitable portion thereof when the funds are not adequate for this purpose); and the balance, if any, shall be used for the payment of liquidated damages.

(3) In the performance of any contract entered into pursuant to the provisions of 38 U.S.C. 620 to provide nursing home care of veterans, no contractor or subcontractor under such contract shall be deemed in violation of Section 102 of the Contract Work Hours and Safety Standards Act by virtue of failure to pay the overtime wages required by such section for work in excess of 8 hours in any calendar day or 40 hours in the workweek to any individual employed by an establishment which is an institution primarily engaged in the care of the sick, the aged, or the mentally ill or defective who reside on the premises if, pursuant to an agreement or understanding arrived at between the employer and the employee before performance of the work, a work period of 14 consecutive days is accepted in lieu of the workweek of 7 consecutive

days for the purpose of overtime compensation and if such individual receives compensation for employment in excess of 8 hours in any workday and in excess of 80 hours in such 14-day period at a rate not less than 1½ times the regular rate at which the individual is employed, computed in accordance with the requirements of the Fair Labor Standards Act of 1938, as amended.

#### § 5.16 Training plans approved or recognized by the Department of Labor prior to August 20, 1975.

(a) Notwithstanding the provisions of § 5.5(a)(4)(ii) relating to the utilization of trainees on Federal and federally assisted construction, no contractor shall be required to obtain approval of a training program which, prior to August 20, 1975, was approved by the Department of Labor for purposes of the Davis-Bacon and Related Acts, was established by agreement of organized labor and management and therefore recognized by the Department, and/or was recognized by the Department under Executive Order 11246, as amended. A copy of the program and evidence of its prior approval, if applicable shall be submitted to the Employment and Training Administration, which shall certify such prior approval or recognition of the program. In every other respect, the provisions of § 5.5(a)(4)(ii)—including those relating to registration of trainees, permissible ratios, and wage rates to be paid—shall apply to these programs.

(b) Every trainee employed on a contract executed on and after August 20, 1975, in one of the above training programs must be individually registered in the program in accordance with Employment and Training Administration procedures, and must be paid at the rate specified in the program for the level of progress. Any such employee listed on the payroll at a trainee rate who is not registered and participating in a program certified by ETA pursuant to this section, or approved and certified by ETA pursuant to § 5.5(a)(4)(ii), must be paid the wage rate determined by the Secretary of Labor for the classification of work actually performed. The ratio of trainees to journeymen shall not be greater than permitted by the terms of the program.

(c) In the event a program which was recognized or approved prior to August 20, 1975, is modified, revised, extended, or renewed, the changes in the program or its renewal must be approved by the Employment and Training Administration before they may be placed into effect.



**§ 5.17 Withdrawal of approval of a training program.**

If at any time the Employment and Training Administration determines, after opportunity for a hearing, that the standards of any program, whether it is one recognized or approved prior to August 20, 1975, or a program subsequently approved, have not been complied with, or that such a program fails to provide adequate training for participants, a contractor will no longer be permitted to utilize trainees at less than the predetermined rate for the classification of work actually performed until an acceptable program is approved.

\* \* \* \* \*

[FR Doc. 81-23736 Filed 8-13-81; 8:45 am]

BILLING CODE 4510-27-M



# Federal Register

Friday  
August 14, 1981

---

## Part IX

### Department of Agriculture

---

Food and Nutrition Service

---

Food Distribution Program



## DEPARTMENT OF AGRICULTURE

## Food and Nutrition Service

## 7 CFR Part 250

## Food Distribution Program

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

**SUMMARY:** This final rule sets forth revisions to the requirements which permit distributing agencies, subdistributing agencies, and recipient agencies to employ commercial facilities to process USDA-donated foods by converting them into different end products or by repackaging them. The provisions prescribed in this rule will ensure that food processors pass on maximum benefits of donated foods to recipient agencies and that processing activities are conducted in a manner which maintains maximum accountability and integrity of the donated foods provided by the Food and Nutrition Service (FNS).

**EFFECTIVE DATE:** August 14, 1981.

**FOR FURTHER INFORMATION CONTACT:**

Gwena Kay Tibbitts, Chief, Program Monitoring and Policy Development Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-8386.

The Final Impact Statement describing the options considered in developing this final rule and the impact of implementing each option are available on request from the above named individual.

**SUPPLEMENTARY INFORMATION:** FNS has determined that this action meets none of the criteria listed in the definition of "major rule" in Executive Order 12291. While the value of the USDA-donated foods that are already subject to commercial processing under previous regulations exceeds \$100 million, the effect of these amendments will be that schools and institutions can receive additional and more varied end products costing less than equivalent commercial products. In addition, while slight increases in distributing agencies' costs of supervising processing activities may result from the amendments, State Administrative Expense funds, provided in accordance with section 7 of the Child Nutrition Act of 1966, may be used to assist distributing agencies with these cost increases. Further, the amendments will result in increased processing activities, thereby enhancing competition, employment, innovation and productivity.

G. William Hoagland, Administrator of the Food and Nutrition Service (FNS), has determined that this action will not have a significant economic impact on a substantial number of small entities. The primary purpose of these rules is to improve administration of the Food Distribution Program by (1) increasing State agency monitoring responsibilities, (2) requiring certification and inspection of certain end products and (3) improving accountability. Increased costs for processors should be minimal because the changes required by this rule are cost effective.

State agencies, school food authorities and commercial processors of USDA-donated foods have all expressed concern about the lack of detailed and definitive guidelines concerning processing contracts. Therefore, these final rules become effective immediately upon publication so that they may be implemented as early as possible during the school year which begins July 1, 1981.

The information collection requirements contained in this final rule are subject to review under the Paperwork Reduction Act of 1980 and have been submitted to the Office of Management and Budget (OMB). They will not become effective until OMB clearance has been obtained.

**Introduction**

The regulations for food distribution permit distributing agencies, subdistributing agencies, and recipient agencies to contract with commercial facilities to process USDA-donated foods into different end products or by repackaging them. This authority has existed since the regulations were first issued in October 1958, but only since the early 1970's has FNS taken an active role in encouraging donated-food processing after the foods have been made available to the State level. The impetus for this encouragement came from changes in child nutrition legislation guaranteeing a designated level of commodity assistance based on meals served within each State.

As the supply of agricultural commodities became more constant, States and schools saw the opportunity to convert donated products into more convenient or table-ready forms. This change has helped expand donated-food use from a limited number of commodities to a broader array of products processed from commodities. For example, a quantity of donated flour becomes a quantity of bread, crackers, cookies, pizzas, and of many other precooked or ready-to-serve items.

As the food distribution program has taken on new dimensions, State

agencies, schools, and the food industry have become more involved in processing activities. As of July 1980, 41 agencies had processing contracts with about 420 food companies. During school year 1980, the value of school entitlements for donated foods amounted to approximately \$707 million. In addition to the entitlements, price-supported foods valued at nearly \$132 million were donated to schools in school year 1980. Section 416 foods are particularly suitable for processing. While flour is probably the largest single item converted, cheese and other dairy items, peanut products, oils, meat and poultry, and many other donated foods, also lend themselves to processing. FNS does not currently have any available data on the volume of donated foods being processed, but estimates that it may be as much as 20 percent of the total amount distributed.

Processing contracts have come under close scrutiny as a result of a national audit conducted in fiscal year 1978 by the Department of Agriculture's Office of the Inspector General (OIG). The audit, which was requested by FNS, included 18 firms doing business with 10 State agencies in 5 of the 7 FNS Regions. OIG's report of its comprehensive audit was released on March 29, 1979, and revealed significant problems in the receipt, use and disposition of donated foods by commercial processors. These regulations reflect FNS's desire for stricter contractual provisions, improved accountability, increased monitoring requirements, and overall clarification of processing regulations.

**Analysis of Comments**

On June 24, 1980, FNS published a comprehensive and detailed proposal concerning the processing of USDA-donated foods (45 FR 42303-42312). FNS invited careful public scrutiny of that proposal and encouraged detailed written criticism and comment. A total of 90 days was afforded the general public in which it could comment on the proposed rule. A total of 155 comments was received by FNS.

In addition to inviting comments on the proposed regulations, several on-site reviews of processing plants were conducted by FNS in conjunction with the Food Safety and Quality Service (Meat, Dairy, and Fruit and Vegetable Grading Branches) and with the Federal Grain Inspection Service. The purpose of the reviews was to determine if the requirements outlined in the proposed regulations will lead to the desired accountability for which they were intended. The proposed regulations were discussed at various meetings with



representatives from the FNS Regional Offices, State distributing agencies, and processing companies.

FNS also conducted a workshop in which representatives from various States, Food Safety and Quality Service, Federal Grain Inspection Service, and FNS Regional Offices participated. The purpose of the workshop was to analyze comments received concerning the proposed regulations.

This preamble articulates the basis for significant changes from the June 24, 1980 proposal. The reasons supporting the provisions of the June 24 proposal which are unchanged by the final rule were carefully examined in light of the comments to determine the continued applicability of each justification. Unless otherwise stated, the rationale contained in the proposal should be regarded as the basis for the pertinent final rule. Thus, a thorough understanding of the grounds for the final rule requires reference to the June 24, 1980 publication.

#### Definitions

**Contract Value of the Donated Foods.** Section 250.14(b)(2) of the proposed regulations defined contract value of the donated foods as (i) the Department's cost of acquiring and delivering the donated foods to be processed based on the most recent data provided by the Department on the date a processing contract is signed, or (ii) the processor's documented cost of purchasing foods meeting or exceeding the donated foods' specifications as of that date as determined by the applicable Federal acceptance service or by a method acceptable to such service.

Eleven comments were received concerning the definition of contract value of the donated foods. The value of the donated foods established in a contract is the basis for crediting recipient agencies for the donated food content of the end products purchased under a processing contract or for establishing the amount to be paid to a contracting agency when a processor is unable to return donated foods.

Four commenters expressed the opinion that only the USDA value should be utilized for contract purposes and that the USDA value should be published and provided by USDA at least quarterly to all distributing agencies. The commenters indicated that any reduction in value of the donated foods could adversely affect the entitlement figures of the contracting agency. The commenters also believed that by requiring processors to use the USDA value, all contracts would be negotiated on a more equitable basis.

Several commenters were opposed to the use of the USDA value of donated food for contract purposes. They stated that in many instances, processors can purchase foods meeting or exceeding the donated food specification at a lower price than the USDA purchase price. The commenters stated that by requiring them to use the USDA figure, the sale price of the processed items would be artificially inflated in order to accommodate the designated figure.

One commenter stated that the distributing agency of a State may not even be a party to the contract, and requested that the contracting agency and processor negotiate the best return value for the donated foods supplied.

Section 250.3 of the final regulations defines contract value of the donated foods as: (1) the Department's cost of acquiring and delivering the donated foods to be processed based on the most recent data provided by the Department on the date a processing contract is signed, or (2) the processor's most recent data documenting the cost of purchased foods meeting or exceeding the donated foods' specifications delivered to the processing plant.

This revision provides the processor with two methods for determining contract value of the donated foods, to be approved by the distributing agency. However, in instances when the contract value of donated foods is approved at a lower value than the Department's cost of acquiring and delivering such foods on the date a processing contract is signed or subsequently revised, the processor shall be required to maintain records to substantiate the lower delivered cost and that the food purchased meets or exceeds the donated food specifications. These records shall be maintained for a period of three years. FNS may, by written notice, require longer retention of any records necessary for resolution of an audit or of any litigation.

#### Distributor

Section 250.14(b)(5) of the proposed regulations defined distributor as a commercial food purveyor or handler who is independent of a processor and sells end products to recipient agencies.

Two comments were received regarding the definition of a distributor. Commenters stated that the definition as worded minimized the importance of the distributor's role because the definition did not reflect the recordkeeping functions of the distributor. One commenter requested that the definition be expanded to allow a distributor to deliver products on a fee for service basis, which means assessing the

recipient agency for the handling charges of the delivery only.

In Section 250.3 of the final regulations the definition of distributor has been expanded to reflect more accurately the responsibility of the distributor to sell and bill delivered end products to recipient agencies.

#### Processor

Processor was defined under Section 250.14(b)(11) of the proposed regulations as a commercial or institutional facility, other than a food service management company, which processes or repackages donated foods.

One comment was received requesting that the words "institutional facility" be removed from the definition of "processor" so that public and private nonprofit schools and institutions which process donated foods on behalf of other recipient agencies would not be subject to the same stringent provisions as commercial facilities. Since the proposed regulations did not intend that such noncommercial processing be affected by the new provisions, the term "or institutional" has been deleted from the definition in Section 250.3 of the final regulations. This will permit institutions to continue processing donated foods and not be subject to the terms and conditions of the processing provisions set forth in § 250.15(d) of the final regulations.

#### Processing State Plan of Operations

##### *Date of Submission of the Processing State Plan of Operations*

Section 250.14(c) of the proposed regulations required submission of a Processing State Plan of Operations by distributing agencies to FNS not later than May 15, 1981 and not later than May 15 of each subsequent fiscal year. Approval of the Processing State Plan by FNS will be a prerequisite to distributing agencies' approval of any processing agreements.

Seven comments were received expressing concern that approval of processing contracts could be delayed pending submission and approval of State Plans for fiscal year 1982. Two commenters were definitely opposed to the development of the Processing component of the State Plan until regulations are final. One commenter stated that the State Plan should coincide with the school year calendar instead of the fiscal year.

FNS has decided that only the Processing Plan of Operations will be required for School Year 1982. There will be no overall State Plan for Food Distribution for Fiscal Year 1982.



Meanwhile, the Department is requiring under § 250.8(w) of these final regulations that a Processing Plan of Operations be submitted to FNS for approval within 90 days of the publication of these final rules and by May 15 of each subsequent year. All references to the processing component of the State Plan in the proposed rules have been revised to reflect this change in the final rules. Once final regulations are published requiring the submission of a State Plan of Operations for Food Distribution, the Processing Plan of Operations will become a component of the State Plan.

As a result of ongoing audits of processing activities, numerous deficiencies have been identified which have placed FNS under scrutiny by the Office of the Inspector General and Congress. The Processing State Plan will provide FNS with a means to assess processing activities within the State.

Since numerous deficiencies in processing are still being identified, FNS feels that it is imperative to implement the Processing Plan of Operations as expeditiously as possible. For School Year 1982 State distributing agencies may approve contracts prior to approval of this Plan provided that the terms and conditions of the contract are in compliance with § 250.15(d) of this part. For future years, since the majority of processing agreements terminate on June 30, submission and approval of State Plans should not result in delays in contract approvals. If Processing Plans of Operations are submitted to the Regional Office by May 15, and the Regional Office approves the Plan in 45 days, processing contracts may be approved beginning July 1.

#### *Processing Contract Manual*

Section 250.14(c)(1)(iii) of the proposed regulations required State distributing agencies to develop and provide a processing manual or similar procedural material for guidance to contracting agencies, recipient agencies and processors to be included as part of the State Plan.

Sixteen comments were received expressing a desire for guidance from FNS in developing the processing manual which was required in the proposal. Several comments strongly favored developing the processing contract manual apart from the State Plan, so that changes would not require amendments to the Plan. Three commenters felt that the requirement for a processing manual should be eliminated.

Due to the time constraints placed on the State distributing agencies for the development and submission of the

Processing Plan of Operations, FNS decided to delete the requirement for submission of the manual as part of the Plan. However, the State distributing agency must develop and provide a processing manual or similar procedural material for guidance to contracting agencies, recipient agencies and processors. This guidance material will be provided to processors within 60 days of approval of the annual agreement by the State distributing agency in accordance with § 250.15(t). This material will also be provided to recipient agencies and contracting agencies within 60 days of approval of the annual agreement to receive donated commodities by the State distributing agency.

#### *Standard Form Contract*

State distributing agencies were required under § 250.14(c)(1)(ii) of the proposed regulations to provide a copy of the standard processing contract(s) being utilized within the State. The standard form contracts were to be submitted as part of the Processing Plan of Operations.

Three commenters recommended that FNS develop a standard form contract to be distributed to all distributing agencies outlining minimum contractual provisions to ensure compliance with the regulations. Several commenters recommended that contracts used by recipient agencies contain the same provisions as those contained in the State contract(s).

FNS is providing guidelines for minimum contractual requirements under § 250.15(d) of the final regulations. In order to permit State distributing agencies and recipient agencies to comply with applicable State and local laws, however, the final regulations do not reflect a change from the proposed regulations. Flexibility must be maintained in order to accommodate the specific needs of the individual States.

#### *Monitoring*

State distributing agencies would be required under § 250.14(c)(1)(iv) of the proposed regulations to include as part of the Processing Plan of Operations the manner in which the distributing agency will monitor processing activities.

This particular section of the Processing Plan generated many comments of concern. While the majority of the commenters favored an increased monitoring requirement for processing activities, they requested specific guidelines from FNS to help them conduct reviews more objectively. One commenter felt that FNS should be in charge of monitoring all processing activity, with the States having no

responsibility for this function whatsoever. Several commenters recommended that FNS monitor the activities of multi-State contracts or allow the States to work out cooperative interstate monitoring activities to eliminate duplication of effort. Another commenter felt that the idea of monitoring requirement was a procedural burden that will create hardships for the States as well as the processors. That same commenter stated that processing would be eliminated if all the new requirements were mandated.

FNS is in the process of collecting data to determine the extent of monitoring of processing activities currently taking place. By examining forms currently used by distributing agencies, a suggested review format will be developed for distribution to the State distributing agencies for guidance in conducting reviews. Plans are also underway for the FNS national office to coordinate reviews with its Regional Offices of processors holding multi-State agreements. The results of these reviews will be distributed to all appropriate parties in an attempt to eliminate duplication of effort among contracting agencies.

Section 250.15(b)(1)(iii) of the final regulations retains the requirement for State distributing agencies to monitor processing activities. FNS feels that it is imperative that processing activities be monitored so that deficiencies can be identified and corrected on an ongoing basis. Onsite reviews of processing activities provide the best possible means to accomplish this monitoring.

#### *Requirements for Processing Contracts*

##### *Permissible Contractual Arrangements*

Section 250.14(d)(1) of the proposed regulations permitted the State distributing agency to contract for processing, pay the processing fee and deliver the end products to recipient agencies through its own distribution system.

Four commenters recommended that such a fee for service arrangement be expanded to include subdistributing agencies and recipient agencies. Those same commenters felt that the fee arrangement as written was too restrictive. They believed recipient agencies should be able to make payments directly to a processor. Several commenters also indicated that many State distributing agencies are funded in such a way that it would be impossible to pay the processing fee for an entire State.



The proposed regulations were intended to permit a subdistributing agency or a recipient agency to enter into processing agreements on a fee for service basis. Clarifying language has, therefore, been added in § 250.15(c)(1) of the final regulations.

It was suggested by one commenter that the processor should disclose the base price of end products (cost of end products using other than donated commodities) to the distributing agency to allow the recipient agencies to determine the processor's profit margin. Four commenters favored the processor listing Free on Board price or distributors' price list for products in an area.

The final regulations do not require that this information be provided for purposes of contract approval. To require a base price or a distributors' price list for a specific area would be detrimental to the processing program. FNS has been informed that many processors would not participate in the processing program if required to furnish information which could result in loss of contracts for processors.

One commenter was in favor of requiring bid procedures for the procurement of processed food items.

Because USDA-donated foods are not subject to the provisions of Attachment O of OMB Circular A-102, the regulations do not require competitive bidding, but neither do they prohibit contracting agencies from utilizing such a system to ensure the most efficient and economical processing.

A commenter asked who is responsible for contractual compliance when a subdistributing agency or recipient agency enters into a contract. One commenter felt that a distributing agency should not be able to refuse a processing contract to any processor. This commenter said that if a recipient agency wishes to enter into a contract and maintain the required records, the distributing agency should have nothing to say about it.

The State distributing agency is responsible for all commodities delivered for the State's use and must assure that all processing activities are performed in compliance with the final regulations; therefore, the State distributing agency must approve all processing agreements. If the processor supplies the distributing agency with all required information and the processed food item can be used in the required child nutrition program meal patterns, it is anticipated that no reasonable request for a contract would be denied. Therefore, the final regulations have not been revised in this respect.

#### *Description of End Products Produced*

Proposed § 250.14(e)(4)(ii) required the processor to furnish a description of each end product to be processed, the quantity of each donated food, and the aggregate quantity of all other foods needed to yield a specific unit of each end product, including all conversion and processing loss factors pertaining to the donated food(s).

Six commenters recommended that this section be revised to require a listing of all other ingredients utilized in the production of a specific unit of end product with only flavorings and seasonings listed as an aggregate quantity, as currently required in § 250.6(m). Based on the comments received, § 250.15(d)(4)(ii) of the final regulations requires a listing of all ingredients utilized in a specific end product with only flavorings and seasonings listed as an aggregate total. This change was adopted in order to assist the State distributing agencies to evaluate more fully and approve data submitted on a price and yield schedule, a necessary component of any processing contract.

#### *Subcontracting*

Section 250.14(e)(5) of the proposed regulations prohibited the processor from assigning the processing contract or delegating any aspect of processing under a subcontract or other arrangement without the written consent of the contracting agency and the distributing agency.

Subcontracting is standard business procedure in which a processor assigns or delegates any portion of the manufacturing process to another processor(s).

There were mixed comments on whether FNS should permit the use of subcontracts as provided for in the proposal. One commenter recommended that subcontracting be prohibited altogether while two commenters recommended that these provisions be retained.

The use of subcontracts will be permitted with written concurrence from the distributing agency in accordance with § 250.15(d)(5) of the final regulations. In the highly technical and specialized food industry, it is often advantageous to have one manufacturer produce a component of an end product with final assembly accomplished by another processor. By incorporating the special capabilities of each processor, a contracting agency can provide a high quality end product at a reasonable price to the recipient agencies.

#### *Agreement Renewal*

Providing that contract performance has been satisfactory, § 250.14(e)(1) of the proposed regulations permitted the renewal of contracts for additional periods of not more than one year by mutual agreement of all parties and upon written approval by the distributing agency.

Three commenters advised that in order to renew a processor's agreement for a one year period, the company must have performed in full compliance the previous year. Another commenter requested requiring an annual accounting report of the processor by the distributing agency at the close of the year.

The proposed regulations provided that contracts may be renewed for additional periods of not more than one year by mutual agreement of all parties and upon written approval by the distributing agency, provided that contract performance has been satisfactory.

The State distributing agency is required under § 250.15(d)(1) of the final regulations to assess the processor's performance annually. Such an assessment can be accomplished by any means set forth by the distributing agency, including annual accounting reports.

Thus, there has been no revision to the proposed regulations concerning agreement renewal.

#### *Performance Bonding*

The processor was required under § 250.14(e)(1)(viii)(B) to furnish to the contracting agency prior to the delivery of any donated foods for processing a performance supply and surety bond or an irrevocable letter of credit payable in an amount acceptable to the distributing agency.

Twenty-seven commenters were opposed to the requirement for bonding as it appeared in the proposed regulations. Nine commenters felt that bonding is far too costly a means of insurance which will ultimately drive the cost of end products higher for all recipient agencies. It was also pointed out by seven commenters that it is very difficult for a small business concern to obtain a bond and requiring one would be discriminatory to that particular group of processors.

One commenter felt that no bond should be required if the commodities provided to the processor are valued at less than \$1,000. Twelve comments were received which recommended different types of bonding depending on the volume of processing, the commodities



being processed and the nature of the end products being produced. One commenter specified that the minimum amount of a bond should be \$25,000 and the maximum bond request be valued at \$250,000. The majority of the commenters recommended the use of alternative methods of insurance covering the value of the donated foods in inventory at any particular time. Commenters recommended that alternative means of bonding should be explained by FNS.

Based on these comments, FNS has included in § 250.15(d)(4)(viii)(B) of the final regulations alternative means of insurance that may be utilized or requested by a distributing agency to protect the value of donated foods supplied to processors. The distributing agency will be held liable by FNS for any donated foods provided to a processor.

However, FNS recommends the use of bonding whenever possible, since past experience has shown this widely used practice to be a very effective means of protection for the value of commodities.

#### **End Products Sold by Processors**

##### *Listing of Recipient Agencies*

Section 250.14(f)(3) of the proposed regulations required a distributing agency to provide a processor with a listing of all recipient agencies eligible to purchase end products under the contract.

Two commenters felt that providing processors with a list of all recipient agencies was time-consuming and costly. It was recommended that lists need only be furnished upon request by a particular processor. On the other hand, one commenter felt that a list of all recipient agencies should be provided to all distributors as well as all processors.

The provision remains the same under § 250.15(e)(3) of the final regulations because FNS believes that such information is readily accessible to the distributing agencies. Provision of these lists is also necessary to ensure that processed end products are received only by eligible recipient agencies. Lists are essential when distributing end products containing nonsubstitutable foods to prevent ineligible recipient agencies from receiving them.

##### *Pricing Structure*

Section 250.14(f)(1) of the proposed regulations required that the processing contract should include the processor's established wholesale price schedule for quantity purchases of specified units of end products.

Concerning the pricing structure which is required in this section, one processor commented that prices will vary among eligible recipient agencies, depending on such variables as volume discounts, bid prices, and delivery charges. That same processor stated that a processor could not declare a price that would apply to all recipient agencies within a State.

Section 250.15(e)(1) of the final regulations require the processor to supply a wholesale price schedule because, while prices may vary as to different recipient agencies receiving the same processed end product, figures must be furnished in order to guarantee that the contract value of the donated foods is received by all recipients. The difference in the price of an item produced from a processor's ingredients and one produced from USDA donated ingredients will remain constant.

#### **End Products Sold by Distributors**

##### *Discount/Refund System for Payment of Processed End Products Sold Through Distributors*

Section 250.14(g) of the proposed regulations required that when a processor transferred end products to one or more distributors for sale and delivery to recipient agencies, such sales should be only under a refund system. The processor would make refund payments directly to the recipient agencies.

This section received more comments than any other in this regulation package. Eighty-nine commenters opposed a refund system (see definition in § 250.3) for processed food items sold by a distributor. Thirty-four commenters felt that a refund system when a distributor is used would be more costly than the discount system (see definition in § 250.3) and would disrupt operations that have taken place for years. It was believed by many commenters that this system would tie up the school system's money until the company made refunds equal to the value of donated foods contained in the end product.

Forty-one commenters were opposed to the refund system because they believe it involves excessive bookkeeping and is time-consuming. The commenters explained that for a large school district with two hundred schools, the central office would have to obtain invoices from all the units and perform a manual tally before they would even have the data to complete a refund application.

In lieu of the proposed system, thirty-seven commenters felt that the choice as to whether processed food items are to be sold through distributors on the

refund or discount system should be permitted if clear accountability of the donated foods can be assured. The aforementioned comments represented the majority of responses to this particular issue.

If the refund system is required when a distributor is used, many commenters had reservations as to how the system would work. One stated that the refund system would work in a situation where unlimited substitution of donated foods was permitted. Three commenters requested information on how to account for refund payments on their quarterly financial reports to Child Nutrition Directors. Other commenters felt that instead of submitting a refund application for purposes of obtaining the refund, invoices or copies of invoices would more than suffice.

Several commenters who were opposed to the refund system felt that accountability of the donated foods and end products sold to recipient agencies should remain with the processor and distributing agency. They felt that the system as proposed places the recordkeeping burden totally on the recipient agencies. The whole system, as described by two commenters, creates inefficiencies that would offset any benefit of the refund payment. Other respondents who have worked with the refund system claim problems in receiving rebates for applications submitted.

Small businesses claim they will no longer be able to participate in the processing program because their increased costs for clerical personnel and the processing of refund checks will be too great for them to absorb.

Five commenters stated that by maintaining the discount system through a distributor, the schools could immediately obtain the price reductions for processed food items, and also be able to maintain the economy of delivery through established networks. They claim that by increasing the number of items a distributor is able to supply to the schools, the overall cost of particular drop or delivery cost per unit will decrease. They feel the only way for schools to obtain maximum economy of delivery is to have the distributors handle all foods.

One processor stated that if the refund system through a distributor is required, it could affect the rapport between distributors and processors, with the schools suffering the consequences. Through cooperative efforts of the distributing agencies, processors, distributors and recipient agencies, many commenters felt that a system could be devised which would



maintain full value accountability and integrity of the donated foods when processed food items are sold at a discounted price through a distributor.

There are definite advantages and disadvantages to each system. The discount system, which is more popular among the recipient agencies, requires less staff and paperwork for the recipient agencies and does not tie up funds. It also enables the rural and smaller school districts to take advantage of the processing program. The discount system does present problems with accountability. When title to the processed end products passes to the distributor, the processors have difficulty maintaining records which substantiate actual donated food inventory of the commodities contained in those products. Reductions in the donated food inventory can only take place when the processed foods have actually been delivered to eligible recipient agencies. Processors and distributors must coordinate their recordkeeping activities to ensure accurate inventory reporting. Therefore, an accurate accountability of the donated food inventory is difficult to accomplish.

FNS is still recommending the use of the refund system for processed food items sold by distributors. However, § 250.15(f) of the final regulations provide that, with written concurrence from the Regional Office, a distributing agency may permit the use of any other system that will demonstrate and ensure proper accountability for end products sold through distributors.

One commenter stated that many schools would forget to file their refund application requesting payment. Four commenters felt that the processor should not be held responsible for refund payments if the schools do not file a request for a refund. Several processors felt that an attempt should be made at standardizing the refund application if it is going to be requested. They claim that there is a different form utilized by almost every State distributing agency which complicates the task of making timely refunds.

State distributing agencies supply recipient agencies with a listing of approved processors and of methods utilized to determine the donated-food value. It is the responsibility of the recipient agencies to apply for every allowable credit for which they are entitled.

Two commenters also felt that selling processed food items through a distributor at a discount price structure could be accomplished if the distributor were a party to the processing contract.

FNS decided that the processors should be held ultimately responsible for the donated foods either in raw or finished product state. They may hold a distributor responsible for end products held in their possession but the distributor need not become a party to the processing contracts.

#### *Distributors' Handling of Only Substitutable Foods*

Section 250.14(g) of the proposed regulations required that the sale of processed end products through a distributor could only include donated foods that are substitutable, such as butter, cheese, flour, nonfat dry milk, and other such foods as are specified in § 250.14(h)(i) of the proposed regulations.

Twenty-six comments were received opposing the stipulation that only processed food items containing substitutable foods could be sold through a distributor. If the provision is implemented, it was predicted by many commenters that many processors and school districts would drop out of the processing program. Further, according to those same commenters, many distributors would no longer be able to supply processed items containing non-substitutable commodities to the school districts they service. They claim that many large major city school systems now rely on distributors for the delivery of all processed food items.

As indicated under the previous subject heading, FNS has revised the proposed regulations to allow the distributing agency to approve an alternate system providing for the sale of processed food items produced from non-substitutable foods through distributors. The rationale provided in comments on this issue pointed out that distributors service the total food needs, both for commercially purchased products and those processed from USDA donated commodities, of many schools and districts. If distributors are prohibited from handling products processed from non-substitutable donated foods, either the processors or the schools themselves will have to perform the delivery function.

Two commenters claimed that the use of established prices for non-substitutable food items handled through distributors, in the event it is permitted, could be considered legalized price fixing.

While it is not the position of FNS to lock in prices for processed foods handled through distributors, the value of the donated foods contained in the end products must be guaranteed to the recipient agencies. Furnishing an established price list for non-

substitutable food items is not required by the regulations; however, a system which guarantees full value of the donated foods must be outlined by the processor. Use of a price sheet is one means of accomplishing this.

#### *Substitution of Donated Foods With Commercial Foods*

##### *Additional Substitutable Items*

Section 250.14(h)(1)(2) of the proposed regulations stated that a processing contract may provide for a processor to substitute for designated donated foods a like quantity of the same foods of equal or better quality. The contract must stipulate that only butter, cheese, corn grits, cornmeal, dried beans, dried peas, flour, lentils, macaroni, nonfat dry milk, peanut butter, peanut granules, roasted peanuts, rice, rolled oats, rolled wheat, and spaghetti may be substituted and if substitution takes place, the processor must have documentation that the foods substituted are of domestic origin and at least equal to the minimum specifications of the donated foods.

Ten comments were received recommending that all commodities be substitutable. Two commenters simply wanted the list of substitutable commodities expanded and one commenter felt that only graded meats and poultry should be classified as non-substitutable.

Six commenters felt that if the regulations provide that a processor must document that substituted foods are of equal or better quality to the donated foods supplied, then FNS should provide guidance as to what will be adequate documentation. Several other commenters asked whether processors using substitutable donated foods for their own commercial production would be required to make a physical inventory of such foods, or whether a "book" inventory would be adequate.

It was also stated by several commenters that if the proposed regulations became final, these provisions will restrict processing agreements using non-substitutable commodities to large districts or to distributing agencies handling distribution of end products. Many commenters from smaller districts believed they will not be able to have these items processed.

In instances where several districts turn over inventories of non-substitutable foods to one processor, one processor suggested that processors be able to commingle the total of all the foods for purposes of processing. The processor indicated that having to set up



a run for each individual school system being serviced by a processor is not cost effective. The same processor stated that such a practice is contrary to good business procedures and could not be followed. Also, several commenters indicated that fruits and vegetables are available to processors with similar specifications as those of USDA and that provisions for substituting such donated food items should be added.

Section 250.15(g)(2) of the final regulations allows the State distributing agency to approve requests for additional substitution of commodities by processors upon written request. The processor must demonstrate and ensure in the written request that the commercial foods substituted are of equal or superior quality to the donated foods supplied and are of domestic origin. Such documentation must be maintained by the processor in accordance with § 250.6(r). Upon approval by the distributing agency copies of processor requests for additional substitution of commodities must be forwarded to the FNS Regional Office. The burden of proof that the foods substituted meet or exceed the donated food specifications will rest with the processor. These changes were designed to help processors of non-substitutable foods perform their activities in a more cost effective manner with a guarantee that the foods substituted are equal or superior to the donated foods supplied. Processors of preplated meals will benefit from the provisions added above. Further, manufacturers of food items containing both substitutable and non-substitutable items (e.g., pizza) can produce end products without undue restraints that would delay production and ultimately result in higher prices to the recipient agencies they service. However, in no instance will the processor be permitted to substitute meat or poultry items.

#### **Certification by Acceptance Service**

##### *Use of Federal Acceptance Service Grading in Plants Processing Non-substitutable Donated Foods*

Section 250.14(j) of the proposed regulations required that when meat or poultry items are processed, the processing must be performed in plants under Federal or State meat and poultry inspection programs. Additionally, all processing of donated meats and poultry must be performed under Food Safety and Quality Service (FSQS) acceptance service. For other non-substitutable donated food items, if the dollar value of the commodities represents an acquisition cost to the Department of \$15,000 or more, the proposed rules

required that processing be performed under continuous acceptance and certification by the applicable Federal acceptance service to prevent unauthorized substitution and to verify that the quantities of donated foods utilized are as specified in the processing contract.

The majority of the commenters felt that requiring acceptance service grading was a good idea for certain commodity processing, but had serious doubts as to whether manpower will be available to accomplish the task. Nine comments were received regarding this issue. Fourteen comments disclosed that the cost of this acceptance service grading is high and will result in higher food prices for the processed items. The proposed regulations were considered overly restrictive by the majority of the commenters.

Two commenters suggested that only when meat and poultry are processed should this requirement be mandatory. Several commenters suggested that the use of acceptance service grading only be required for companies who were found to be guilty of program abuses. Still others recommended that monitoring of processing activities be performed on a spot check basis. Three commenters suggested that acceptance service grading be performed at the request of the distributing agency.

One commenter suggested grading service should be mandatory for all non-substitutable commodities. Other comments dealing with non-substitutable commodities indicated that the \$15,000 restriction was extremely arbitrary. Additionally, the manpower availability question was brought up again by the commenters along with the issue of expanding the list of substitutable foods.

Section 250.15(h) of the final regulations requires that acceptance service grading for meat or poultry be performed for processing runs in which the meat or poultry processed is valued at \$10,000 or more. The regulations have also been revised to prohibit processors from structuring processing runs in such a manner as to enable the processors to circumvent this requirement.

Further, the requirement for acceptance service grading for non-substitutable commodities other than meat and poultry representing an Acquisition cost to the Department of \$15,000 or more has been eliminated in § 250.15(i) of the final regulations. However, the contracting agency may require acceptance and certification by such acceptance service at any time, and for any product if deemed necessary.

FNS has reduced the requirements for acceptance service grading for non-substitutable commodities due to the lack of manpower available for grading activities and the increased cost of end products which would be passed on to the recipient agencies as a result of grading services performed.

#### **Labeling End Products**

##### *Labeling*

Section 250.14(k) of the proposed regulations required that (1) except when end products contain donated foods that are substitutable, the exterior shipping containers of end products and, where applicable, the individual wrappings or containers of end products must be clearly labeled "contains commodities donated by the United States Department of Agriculture. This product shall be sold only to eligible recipient agencies," (2) labels on all end products must meet applicable Federal labeling requirements, and (3) when a processor makes any claim with regard to an end product's contribution toward meal requirements of any child nutrition program, the processor must follow procedures established by FNS. The Food Safety and Quality Service of the Department, the Federal Grain Inspection Service or the National Marine Fisheries Service of the U.S. Department of Commerce for approval of such labels.

Two commenters felt that the USDA legend on all boxes containing non-substitutable commodities is unnecessary except for meat and poultry products.

Section 250.15(j) of the final regulations retains the requirement that the USDA legend appear on all shipping containers of end products containing non-substitutable donated foods and, where applicable, the individual wrapping or containers of end products to ensure that processed foods containing donated food items be provided to eligible recipient agencies only.

Several commenters favored requiring more nutritional information on the labels of processed food items as guidance to the school food service personnel. Since nutritional labeling is not required on the labels of foods being purchased by USDA for use in the child nutrition programs, FNS does not want to place this burden on the processors due to the increased costs involved.

#### **Refund Payments**

##### *Refunds*

Section 250.14(m) of the proposed regulations required recipient agencies



to submit refund applications promptly to the distributing agency for verification of eligibility and approval. The distributing agency would then forward the applications to the processor for payment within 30 days after receipt of the applications.

Three commenters felt that the proposed requirement of having the distributing agency review and verify the validity of all refund applications prior to submission to the processors was an unnecessary step creating a greater time lag for payment of the refunds. Five commenters requested that language be introduced to require schools to submit refund applications within 30 days of the reporting month with processors paying the refund within 30-45 days of receipt of the refund applications. It was also believed by several commenters that the amount of time for submission of refund applications at the close of the school year should be reduced to allow the State distributing agencies to close out their records in a more reasonable time frame.

There were no revisions in § 250.15(l) of the final regulations. FNS believes that by requiring the State distributing agency to review the refund applications, only eligible recipient agencies will receive a refund payment.

The processor is given a thirty day period from the date of receipt of the application in which to make the refund payments. The 90-day limit for submission of applications after the close of the school year coincides with the deadline for submission of claims for reimbursement for the National School Lunch and Breakfast programs.

#### Performance Reports

Section 250.14(o) required that processors submit to distributing agencies monthly reports of performance under each processing contract no later than the final day of the month following the reporting period.

Two commenters felt that the proposed 30 day limit was an unrealistic time frame for processors to have to submit performance reports. One commenter felt that requiring monthly reports from the processor will definitely improve the overall accountability of the program. One comment was made favoring the submission of reports, but felt that the processor should have forty-five days to submit them. Four commenters felt that too much recordkeeping is required. Several processors felt that they should not be required to submit monthly reports of performance. One commenter stated that FNS should develop a

standard form for the required monthly performance report in order that the processors not have to adjust format for each State as they do now.

One comment was received from a school lunch director requesting that the schools not have to keep inventory records of processed donated foods.

Another commenter indicated that there is a need to establish penalties for processors who do not report monthly or whose reports are missing any of the required information. Several distributing agencies felt that having to analyze the data on all performance reports was a burdensome, time-consuming task.

Section 250.15(r) of the final regulations requires processors to submit monthly reports of performance within 30 days of the prior month's processing activity. This data must be available to State distributing agencies in order for them to complete the quarterly processing inventory report required by FNS. To extend the allowable time frame in which to submit performance reports would seriously hamper the State distributing agencies in their attempt to complete other required reports.

FNS believes that processed donated foods should be accounted for even at the recipient agency level. These processed food items should be maintained on the same inventory system as purchased and donated foods used in the preparation of meals for the Child Nutrition Programs as required in § 250.8(r).

If processors do not submit monthly performance reports on time, they are not in compliance with the terms and conditions of the processing contract. A State distributing agency can terminate their agreement if the required reports are not submitted. The only way for a State distributing agency to know if all processors are performing their functions as outlined in the contract is for the distributing agency to review all reports for accuracy and completeness of data submitted within the established time frame.

#### Inventory Controls

Section 250.14(p) of the proposed regulations required that a distributing agency monitor inventories to ensure that the quantity of donated foods for which a processor is accountable is the lowest cost-efficient level but in no event more than a four-month supply based on the processor's average monthly usage, unless a higher level has been specifically approved by the distributing agency on the basis of a written justification submitted by the processor.

Eleven commenters felt that the maximum 4-month inventory level required in the proposed rules was too restrictive. Thirteen commenters felt that the level of inventory on hand should be 6 months. Ten commenters felt that the level should be raised to 9 months.

One commenter felt that the level of inventory should be determined by the circumstances of the particular processor. One commenter felt that transfers should be allowed without Regional Office permission. Another recommendation from several commenters favored separate national inventory levels for multi-State processors.

As a result of the comments, § 250.15(o) of the final regulations raises the allowable level of inventory on hand to 6 months with a provision for higher levels with written justification from the processor for approval by the State distributing agency. Under no circumstances should the amount of food ordered be in excess of anticipated usage or beyond the processor's ability to accept or store the food at any one time. The major impetus for the change was the fact that a distributing agency must order the donated foods 75 days prior to the anticipated delivery date and this would tie up a two-month level of inventory giving the processor only a two-month working supply. Additionally the minimum carloading amounts of many commodity food items are such that they represent an inventory far in excess of the four-month supply for distributing agencies which have a smaller average daily participation.

#### Processing Inventory Reports

Section 250.14(q) of the proposed regulations required the distributing agencies to submit to the Regional Office not later than 45 days following the close of each Federal fiscal quarter a report in a form prescribed by FNS showing separate inventory levels for each processor under agreement with contracting agencies within the State.

Eight comments were received recommending that the distributing agencies be given 60 days following the close of each Federal fiscal quarter—rather than 45 days as proposed—to submit the required processor inventory report. The State distributing agencies felt that providing copies of processor reports should be allowable as it is burdensome to require a separate report.

As a result of the comments received, § 250.15(p) of the final regulations requires the submission of the quarterly inventory report not later than 60 days following the close of the Federal fiscal



quarter. This time frame will allow the distributing agencies 30 days past the submission date of processor reports to compile information for their report. If a processor is late with a report, the distributing agency can request the information via telephone and still submit the required report on time.

#### Cooperation With Administering Agencies for Child Nutrition Programs

Section 250.14(r) of the proposed regulations required that in instances when the distributing agency is not the administering agency for child nutrition programs, the administering agency be provided an opportunity to review contracts for the processing of end products to be used in child nutrition programs.

Three commenters were opposed to the proposal to give the State educational agency (SEA) an option of reviewing processing contracts prior to the distributing agency's approval. They felt that since the distributing agency is a party to the contract and is ultimately responsible for full compliance with all terms and conditions, there is no need to have to obtain SEA concurrence prior to approval of processing contracts.

Section 250.15(r) of the final regulations retains the proposed requirement for many State distributing agencies are under SEA. Collaboration with the administering agency of the child nutrition programs takes place on a daily basis. FNS believes that the administering agency should be aware of all processors and processing activities. The food items produced are used in the programs administered by the SEA and while they may not meet the nutritional standards for reimbursement, they may still be appropriate for use in the program.

#### General Comments

Twelve comments were received recommending a reordering of the regulations for clarity. They stated that the proposed regulations were extremely difficult to understand.

The Department has, since these proposed regulations were published, issued a Notice of Intent announcing the need for an overall revision of the Food Distribution Program regulations. This notice, published on December 16, 1980 (45 FR 82890-2), announced that the Department intends to restructure these regulations, and public comments were requested by February 17, 1981. The overall revision will include processing requirements.

Two commenters felt that food service management companies should be treated as processors and that they be required to maintain detailed records

similar to those required for processors. The regulations were not revised in this regard for foods are usually turned over to a food service management company for on-site preparation of meals produced for the recipient agency. Since the company is acting in behalf of the eligible recipient agency, it is the opinion of FNS that the company should be subject to all the requirements for which the recipient agency is subject and should be required to maintain the same records as any eligible recipient agency.

One commenter felt that schools should not be forced to participate in processing agreements. That same commenter felt that the direct distribution of donated foods is much more beneficial to recipient agencies. It was never the intent of FNS to require any unwilling recipient agencies to participate in the processing program. State distributing agencies have entered into agreements to permit recipient agencies to purchase processed end products at a cost less than they would have to pay on the open market. If a food item is currently being used by a recipient agency, it is to its advantage to try to obtain the item at the lowest possible cost.

One commenter favored the development of maximum yields for the donated foods to be used as a guideline by the State distributing agencies and processors. Another recipient agency requested that it be permitted to help in the writing of specifications for processed food items. Yield figures for the donated foods processed will vary according to the end products produced, the types of facilities being utilized, the volume of processing at any time, and any number of other factors. FNS is conducting studies to determine yield ranges which will be applicable to various processed end products. These ranges should be a good indicator of which companies submit figures which deviate substantially from established norm ranges. Recipient agencies are not prohibited from writing specifications from processed end products in conjunction with the State distributing agency.

One commenter favored abolishing all processing contracts and having the Department enter into national State Option and Cost (SOC) contracts. The States then could have the option of receiving processed donated foods as part of their direct distribution entitlement. They would, in turn, be billed for the processing fee and could recoup the monies from the recipient agencies they serve.

The basic premise behind this concept is that instead of USDA providing

commodities only in the raw state, the foods are offered in a more processed form produced under USDA specifications. The distributing agency would pay the difference between the cost of the commodity in its raw state and the cost of the food item in a more processed state.

USDA entered into SOC contracts several years ago on a test basis. For example, recipient agencies could receive frozen whole turkeys as they had always received them, or they could receive fully cooked turkey rolls for which they would be billed a rate per pound. The project was successful for those distributing agencies with monies available to pay the charges for the further processing. It was difficult for many distributing agencies to participate because they did not have the funds to pay the processing fee nor the means to bill recipient agencies for the additional cost of the commodities. Thus, the proposed regulations were not revised to include SOC contracts. In addition, many commodities are now available in a more fully processed form to all recipient agencies without having to assess the distributing agency for additional costs incurred.

Accordingly, Part 250 is amended as follows:

1. Section 250.3 is amended to include the following definitions:

#### § 250.3 Definitions.

"Child nutrition programs" means the National School Lunch Program, the School Breakfast Program, the Summer Food Service Program for Children, and the Child Care Food Program.

"Contract value of the donated foods" means, at the contracting agency's option (a) the Department's cost of acquiring and delivering the donated foods to be processed based on the most recent data provided by the Department on the date a processing contract is signed, or (b) the processor's most recent data documenting the delivered cost of purchased foods meeting or exceeding the donated foods' specifications.

"Contracting agency" means the distributing agency, subdistributing agency, or recipient agency which enters into a processing contract.

"Discount system" means a system whereby a recipient agency purchases end products directly from a processor at an established wholesale price minus the contracted value of donated foods contained in the end products.

"Distributor" means a commercial food purveyor or handler who is independent of a processor and both



sells and bills for the end products delivered to recipient agencies.

"End product" means a product containing any amount of donated foods which have been processed.

"Federal acceptance service" means the acceptance service provided by (a) the applicable grading branches of the Department's Food Safety and Quality Service (FSQS), (b) the Department's Federal Grain Inspection Service, and (c) the National Marine Fisheries Service of the U.S. Department of Commerce.

"Food service management company" means a commercial enterprise or a nonprofit organization which may be contracted with by a recipient agency to manage any aspect of its food service in accordance with § 250.8(b)(3) of this part or in accordance with Part 210.8a of the regulations for the National School Lunch Program.

"Processing" means (a) the conversion of a donated food or donated foods into a different end product or (b) the repackaging of a donated food or donated foods.

"Processing fee" means the amount charged to a contracting agency for a processor's services.

"Processor" means a commercial facility, other than a food service management company, which processes donated foods.

"Performance supply and surety bond" means a written instrument issued by a surety company which guarantees performance and supply of end products by a processor under the terms of a processing contract.

"Refund system" means a system whereby a recipient agency purchases a processor's end products and receives from the processor a payment equivalent to the value of the donated foods contained in the end products.

"Refund application" means an application by a recipient agency in any form acceptable to a distributing agency and processor which certifies purchase of end products and which, upon forwarding to the processor by the distributing agency, obligates the processor to refund the value of the donated food contained in the end products.

2. In § 250.6, paragraphs (n), (r), and (s) are revised, and a new paragraph (w) is added, as follows:

#### § 250.6 Obligations of distributing agencies.

(n) *Processing of donated foods.* Distributing agencies, subdistributing agencies, and recipient agencies may employ commercial facilities to process donated foods by converting them into

different end products or by repackaging them when such processing is contracted for and performed in accordance with the provisions of § 250.15 of this part. For the fiscal year beginning October 1, 1981, and subsequent fiscal years, distributing agencies, prior to entering into or approving processing contracts, shall submit to and receive from FNS approval of the State Plan of Operations required by paragraph (w) of this section, and one or more standard form contracts meeting the requirements of § 250.15(d) of this part, to be required for use within the State.

(r) *Records.* (1) Accurate and complete records shall be maintained with respect to the receipt, disposal, and inventory of donated foods including (i) end products processed from donated foods and (ii) the determination made as to liability for any improper distribution or use of, or loss of, or damage to, such foods and the results obtained from the pursuit of claims by the distributing agency. Such records shall also be maintained with respect to the receipt and disbursement of funds arising from operation of the distribution program, including the determination as to the amount of payments to be made by any processor, as defined in § 250.3, upon termination of processing contracts. (2) Distributing agencies shall require all subdistributing and recipient agencies to maintain accurate and complete records with respect to the receipt, disposal and inventory of donated foods, including end products processed from donated foods, and with respect to any funds which arise from the operation of the distribution program, including refunds made to recipient agencies by processors in accordance with § 250.15(1) of this part. (3) Distributing agencies shall maintain accurate and complete records with respect to amounts and value of commodities refused by school food authorities in accordance with § 250.4(h) of this part and shall require that school food authorities also maintain such records of refusals. (4) Any processor or other entity which contracts with a distributing agency, subdistributing agency or recipient agency to process, repackage, or prepare any donated foods shall be required to keep accurate and complete records with respect to the receipt, disposal, and inventory of such foods similar to those required of distributing agencies under this paragraph. Where donated foods have been commingled with commercial foods, the processor shall maintain records which will permit an accurate

determination of the donated-food inventory. Where the contract value of donated foods, as defined in § 250.3, is lower than the Department's cost of acquiring and delivering such foods on the date a processing contract is signed or subsequently revised, the processor shall be required to maintain records to substantiate the lower delivered cost. In addition, the processor shall be required to keep formulae, recipes, daily or batch production records, loadout sheets, bills of lading, and other processing and shipping records to substantiate the use made of such foods and their subsequent redelivery, in whatever form, to any distributing agency, subdistributing agency or recipient agency. (5) All recipient agencies shall be required to keep accurate and complete records showing the data and method used to determine the number of eligible persons served by that agency. (6) Failure by a distributing agency, subdistributing agency, recipient agency, processor, or other entity to maintain records required by this section shall be considered prima facie evidence of improper distribution or loss of donated foods and the agency, processor or entity shall be subject to the provisions of § 250.6(m) of this part. All such records shall be made available for inspection and review upon request by FNS or by the appropriate distributing agency and shall be retained for a period of three years from the close of the Federal fiscal year to which they pertain. However, FNS may, by written notice, require longer retention of any records necessary for resolution of an audit or of any litigation.

(s) *Reports.* Distributing agencies shall submit (1) monthly reports to the FNS Regional Office covering the receipt and distribution of commodities, (2) quarterly processing inventory reports in accordance with § 250.15(p) of this part, and (3) such other reports covering distribution operations in such form as may be required from time to time by the Department.

(w) *State Plan of Operations for Processing.* (1) Not later than 90 days after publication of these final rules and not later than May 15 of each subsequent fiscal year, each distributing agency shall submit to FNS for approval a State Plan of Operations for Processing. FNS shall provide written approval or denial of the State Plan for Processing or amendment within 45 days of receipt. The State Plan for Processing and all amendments shall be signed by the Chief Officer of the distributing agency. (2) For the fiscal year beginning October 1, 1981, the plan shall meet the



requirements of § 250.15(b). (3) Each distributing agency shall submit its State Plan to Operations for Processing to the State Governor, or his delegated authority, for comment on the relationship of the plan to other State plans and programs. A period of 45 days from the receipt of the State Plan of Operations for Processing shall be afforded for such comments.

#### § 250.13 [Amended]

3. In § 250.13, paragraph (f) is removed and reserved.

4. A new § 250.15 is added as follows:

#### § 250.15 Processing of donated foods.

(a) *Purpose.* (1) This section sets forth the terms and conditions under which distributing agencies, subdistributing agencies, or recipient agencies may enter into contracts for processing of donated foods and prescribed the minimum requirements to be included in such contracts. (2) This section does not pertain to food service management companies utilizing donated foods in the preparation of meals.

(b) *State Plan of Operations for Processing.* Each distributing agency wishing to enter into or approve processing contracts shall have an approved State Plan of Operations for Processing required by § 250.6(w) of this part. Approval of the plan shall be prerequisite to approval by the distributing agency of processing contracts entered into after the date this section becomes effective. For fiscal year 1982, State distributing agencies may approve contracts prior to approval of the State Plan for Processing provided that the terms and conditions of the contract are in compliance with § 250.15(d) of this part.

(1) The State Plan of Operations for Processing shall, as a minimum, include the following:

(i) The methods by which end products are delivered to recipient agencies.

(ii) A copy of the standard processing contract(s) for use within the State.

(iii) The manner in which the distributing agency will monitor processing activities, which shall include (A) the frequency of onsite reviews of processors and contracting agencies planned for the next fiscal year; (B) procedures for reducing any excess inventories of donated foods among processors in accordance with paragraph (o) of this section, and (C) the methods by which the distributing agency will maintain equitable distribution of end products containing donated foods to recipient agencies eligible to receive such foods, in accordance with § 250.6(h) of this part.

(iv) If the distributing agency is not also the administering State agency for child nutrition programs, the manner in which the distributing agency will cooperate with the administering State agency in accordance with paragraph (q) of this section.

(2) Distributing agencies may submit for approval a revised processing State Plan of Operations for Processing or amendments thereto at any time.

(c) *Permissible contractual arrangements.* (1) A distributing agency, subdistributing agency, or recipient agency may contract for processing, pay the processing fee, and deliver the end products to eligible agencies through its own distribution system. (2) A distributing agency or subdistributing agency may contract for processing on behalf of one or more recipient agencies. All recipient agencies eligible to receive the donated foods to be processed may participate in such a processing contract by virtue of the distributing agency/recipient agency agreement required by § 250.6(b) of this part. Under this arrangement processors (i) shall be required to utilize a refund system when they arrange for end products to be sold indirectly to recipient agencies through a distributor unless another system is permitted in accordance with paragraph (f) of this section, (ii) may, with the approval of the distributing agency, utilize either a discount or a refund system when they sell end products directly to recipient agencies or (iii) distributing agency may also allow, with written concurrence from the FNSRO, any other system that can demonstrate and insure proper accountability. (3) A subdistributing agency or recipient agency may also enter into processing contracts with a processor under arrangements similar to those described in paragraph (c) (1) or (2) of this section, provided that the contract has been approved by the distributing agency in accordance with paragraph (m) of this section.

(d) *Requirements for processing contracts.* (1) Contracts with processors shall be in a standard written form approved by FNSRO and shall terminate no later than one year after they have been approved. However, contracts may be renewed for additional periods of not more than one year by mutual agreement of all parties and upon written approval by the distributing agency, provided that contract performance has been satisfactory. (2) Standard form contracts shall be prepared or reviewed by the appropriate State legal staff to assure conformity with the requirements of these regulations and of applicable Federal,

State and local laws. (3) The contract shall be signed by the owner, a partner, or a corporate officer duly authorized to sign the contract, as follows:

(i) In a sole proprietorship, the owner shall sign the contract.

(ii) In a partnership, a partner shall sign the contract.

(iii) In a corporation, a duly authorized corporate officer shall sign the contract.

(4) As a minimum, each processing contract shall include:

(i) The names and telephone numbers of the contracting agency and processor.

(ii) A description of each end product to be processed, the quantity of each donated food and any other ingredient which is needed to yield a specific number of each end product, except that distributing, subdistributing or recipient agencies may permit processors to specify the total quantity of any flavorings or seasonings which may be used without identifying the ingredients which are, or may be, components of seasonings or flavorings.

(iii) The contract value per pound of each donated food to be processed and, where processing is to be performed only on a fee-for-service basis, the processing fee to the contracting agency for a specified number, weight or measure of the end products to be delivered.

(iv) A provision for (A) termination of the contract upon thirty days' written notice by the contracting agency or the processor and (B) immediate termination of the contract when there has been noncompliance with its terms and conditions by the contracting agency or the processor.

(v) In the event of contract termination, a provision for disposition of donated foods and end products in processor's inventories or payment of funds in accordance with paragraph (k) of this section.

(vi) A provision for inspection and certification during processing, where applicable, by the appropriate acceptance service in accordance with paragraphs (h) and (i) of this section.

(vii) A provision that end products containing donated foods that are not substitutable under paragraph (g) of this section shall be delivered only to recipient agencies eligible to receive such foods.

(viii) Provisions that the processor shall:

(A) fully account for all donated foods delivered into its possession by production and delivery to the contracting agency or eligible recipient agencies of an appropriate number of units of end products meeting the



contract specifications, and where end products are sold through a distributor, that the processor remains fully accountable for the donated foods until refunds or any other credits equal to their contracted value have been made to eligible recipient agencies in accordance with paragraph (l) of this section;

(B) furnish to the contracting agency prior to the delivery of any donated foods for processing any such document or assurance as is required by the contracting agency to protect itself from liability for the donated foods. The contracting agency may require a performance supply and surety bond, an irrevocable letter of credit payable in an amount acceptable to the distributing agency, an escrow account in an amount acceptable to the distributing agency, or any other means of protecting itself since the distributing (contracting) agency is held liable by FNS for any donated foods provided to a processor.

(C) use or dispose of the containers in which donated foods are received from the Department in accordance with the instructions of the contracting agency;

(D) apply as a credit against the processing fee or return to the contracting agency (1) any funds received from the sale of containers, and (2) the market value or the price received from the sale of any by-products of donated foods or commercial foods which have been substituted for donated foods;

(E) substitute donated foods with commercially purchased foods only in accordance with paragraph (g) of this section;

(F) meet the requirements of paragraph (j) of this section for labeling end products;

(G) maintain accurate and complete records pertaining to the receipt, disposal, and inventory of donated foods in accordance with § 250.6(r) of this part; and

(H) submit processing performance reports in accordance with paragraph (n) of this section.

(ix) A provision that approval of the contract by the distributing agency shall not obligate that agency or the Department to deliver donated foods for processing.

(5) The processor shall not assign the processing contract or delegate any aspect of processing under a subcontract or other arrangement without the written consent of the contracting agency and the distributing agency.

(e) *End products sold by processors.* When recipient agencies will pay the processor for end products, the contract shall include (1) the processor's

established wholesale price schedule for quantity purchases of specified units of end products, (2) an assurance that the price of each unit of end product purchased by eligible recipient agencies shall be discounted by the stated contract value of the donated foods contained therein, or a refund equal to such value made upon proof of purchase by an eligible recipient agency and (3) a provision that the distributing agency shall give the processor a list of all recipient agencies eligible to purchase end products under the contract.

(f) *End products sold by distributors.* When a processor transfers end products to one or more distributors for sale and delivery to recipient agencies, such sales shall be under a refund system. The processor shall make refund payments to such agencies in accordance with paragraph (l) of this section. A distributing agency may permit the use of any other system that can demonstrate and ensure proper accountability, with written concurrence from the FNSRO, for end products sold by distributors.

(g) *Substitution of donated foods with commercial foods.* The processing contract may provide that the processor may substitute for donated foods a like quantity of the same foods of equal or better quality. If such a provision is included, the contract shall stipulate that (1) only butter, cheese, corn grits, corn meal, flour, macaroni, nonfat dry milk, peanut butter, peanut granules, roasted peanuts, rice, rolled oats, rolled wheat, shortening, soybean oil, spaghetti, and such other foods as FNS specifically approves may be substituted and (2) all components of commercial foods substituted for those donated must be of domestic origin and be identical or superior in every particular of the donated-food specification as evidenced by certification performed by, or acceptable to, the applicable Federal acceptance service. When there is substitution in accordance with this paragraph the donated foods may be utilized by the processor in his own commercial product but shall not otherwise be sold or disposed of in commercial channels. The State distributing agency may approve written requests by processors for additional substitution of donated foods, with the exception of meat or poultry items. The processor must demonstrate and ensure in the written request that the commercial foods substituted are of equal or superior quality to the donated foods supplied and are of domestic origin. Such documentation must be maintained by both parties in accordance with Section 250.6(r). Upon

approval by the distributing agency, copies of processor requests for additional substitution of commodities shall be forwarded to the regional office. The applicable Federal acceptance service, shall, upon request, determine if the quality analysis meets the requirement set forth by the Agricultural Stabilization and Conservation Services (ASCS) in the original inspection of donated foods, and when donated commodities are non-substitutable, insure against unauthorized substitutions, and verify that quantities of donated foods utilized are as specified in the contract.

(h) *Meat and poultry inspection programs.* When donated meat or poultry products are processed or when any commercial meat or poultry products are incorporated into an end product containing one or more donated foods, all of the processing shall be performed in plants under continuous Federal meat or poultry inspection, or continuous State meat or poultry inspection in States certified to have programs at least equal to the Federal inspection program. If the value of the donated meat or poultry items to be processed under any contract at any one time is \$10,000 or more, the processing must be performed under Food Safety and Quality Service (FSQS) acceptance service grading. Under no circumstances shall the processor set up processing runs for the purpose of circumventing this requirement. The cost of this service shall be borne by the processor. In the event that an FSQS inspector is not available or that a school food authority needs product produced on short notice, the State distributing agency may provide the processor with written authority to defer FSQS acceptance service for the specific instance. The processor shall retain all such distributing agency notices on file as part of its production records.

(i) *Certification by acceptance service.* (1) When donated foods (other than meat and poultry) that are not substitutable under paragraph (g) of this section are processed, all processing activities shall be subject to review and audit by the Department, including the applicable Federal acceptance service. The contracting agency may also require acceptance and certification by such acceptance service. (2) Contracting agencies may require that end products processed from substitutable donated foods shall also be subject to such acceptance and certification. In the case of substitutable donated foods, the contracting agency requiring Federal acceptance service should consider the dollar value of the donated foods



delivered to the processor. (3) When contracting agencies require certification in accordance with paragraphs (i)(1) or (2) of this section, the degree of acceptance and certification necessary under the processing contract shall be determined by the appropriate Federal acceptance service after consultation with the distributing agency concerning the type and value of the donated foods and anticipated volume of end products to be processed. The cost of this service shall also be borne by the processor.

(j) *Labeling end products.* (1) Except when end products contain donated foods that are substitutable under paragraph (g) of this section, the exterior shipping containers of end products and, where practicable, the individual wrappings or containers of end products, shall be clearly labeled "Contains Commodities Donated by the United States Department of Agriculture. This Product Shall Be Sold Only to Eligible Recipient Agencies." (2) Labels on all end products shall meet applicable Federal labeling requirements. (3) When a processor makes any claim with regard to an end product's contribution toward meal requirements of any child nutrition program, the processor shall follow procedures established by FNS, the Food Safety and Quality Service of the Department, or the National Marine Fisheries Service of the U.S. Department of Commerce or other applicable Federal agencies for approval of such labels.

(k) *Termination of processing contracts.* (1) When contracts are terminated (i) at the request of a processor, where there has been no fault or negligence on the part of the contracting agency, or (ii) at the contracting agency's request, where there has been noncompliance on the part of the processor with the terms or conditions of the contract, or if any right thereunder in favor of the contracting agency is threatened or jeopardized by the processor, the processor shall at the option of the contracting agency and FNS:

(A) when feasible and with the concurrence of any affected distributing agency(ies), transfer all donated food inventories to other distributing agency(ies) with which the processor has contracted;

(B) return all donated foods unaccounted for or replace them with a like quantity of the same foods of equal or better quality as certified in accordance with paragraph (g)(2) of this section and return such purchased foods at the processor's expense to a

destination designated by the distributing agency; or

(C) pay the distributing agency an amount equal to the Department's cost, based on the most recent data provided by the Department, as of the date of termination, of replacing the foods which cannot be returned to the distributing agency.

(2) When contracts are terminated at a contracting agency's request, where there has been no fault or negligence on the part of the processor, the processor shall:

(i) if the donated foods remaining in inventory are non-substitutable, return foods to the contracting agency unless other arrangements are specifically approved by the State distributing agency;

(ii) when feasible and with the concurrence of any affected distributing agency(ies), transfer all substitutable donated food inventories to other distributing agency(ies) with which the processor has contracts;

(iii) return the substitutable donated foods unaccounted for or replace with a like quantity of the same foods of equal or better quality as certified in accordance with paragraph (g)(2) of this section and return such purchased foods to a destination designated by the distributing agency, with transportation charges for such shipments borne by the contracting agency; or

(iv) pay the distributing agency an amount equal to the Department's cost based on the most recent data provided by the Department, as of the date of termination, of replacing the foods which cannot be returned to the distributing agency or, with FNS approval, pay the distributing agency an amount equal to the stated contract value of donated foods in the processor's inventory.

(3) Funds received by distributing agencies upon termination of contracts shall, at the option of FNS, be (i) used to replace the donated foods in kind, (ii) used by the distributing agency in accordance with § 250.6(k) of this part, or (iii) paid to the Department.

(l) *Refund payments.* (1) When end products are sold to recipient agencies in accordance with the refund provisions of paragraphs (e) or (f) of this section, the contracting agency shall encourage each recipient agency to submit refund applications promptly. In no event shall such applications be submitted later than 90 days after the close of (i) the school year to which they pertain by schools or (ii) the fiscal year to which they pertain by other recipient agencies. (2) The distributing agency shall review each application to verify that the recipient agency is an eligible

purchaser and forward the application to the processor within a reasonable length of time. (3) Not later than 30 days after receipt of the application by the processor, the processor shall make a payment to the recipient agency equal to the stated contract value of the donated foods contained in the purchased end products covered by the application.

(m) *Contract approval.* Distributing agencies shall review and approve processing contracts entered into by subdistributing and recipient agencies prior to the delivery of commodities for processing under such contracts. The distributing agency which enters into or approves a processing contract shall provide a copy of the contract and of these regulations to the processor, forward a copy to the appropriate FNSRO, and retain a copy for its files.

(n) *Performance reports.* (1) Processors shall be required to submit to distributing agencies monthly reports of performance under each processing contract. Performance reports shall be received no later than the final day of the month following the reporting period. The report shall include:

(i) A list of all recipient agencies purchasing end products under the contract and the number of units of end products delivered to each during the reporting period;

(ii) Donated-food inventory at the beginning of the reporting period;

(iii) Amount of donated foods received during the reporting period;

(iv) Number of units of approved end products delivered to eligible recipient agencies during the reporting period and the number of pounds of each donated food represented by these delivered end products;

(v) Donated-food inventory at the end of the reporting period.

(2) Distributing agencies shall review and analyze reports submitted by processors to insure that performance under each contract is in accordance with the provisions set forth in this section.

(o) *Inventory controls.* Distributing agencies shall monitor inventories to ensure that the quantity of donated foods for which a processor is accountable is the lowest cost-efficient level but in no event more than a six-month supply based on the processor's average monthly usage, unless a higher level has been specifically approved by the distributing agency on the basis of a written justification submitted by the processor. Under no circumstances should the amount of food ordered by the contracting agency be in excess of anticipated usage or beyond the processor's ability to accept and store



the food at any one time. Distributing agencies shall make no further distribution to processors whose inventories exceed these limits.

(p) *Processing inventory reports.* Distributing agencies shall submit to the FNS Regional Office not later than 60 days following the close of each Federal fiscal quarter a report showing separately for each processor under agreement with contracting agencies within the State:

(1) the donated-food inventory at the beginning of the previous quarter;

(2) amounts of donated foods received during the quarter;

(3) amounts of donated foods used during the quarter; and

(4) inventory at the close of the quarter.

(q) *Cooperation with administering agencies for child nutrition programs.* If the distributing agency which enters into or approves contracts for end products to be used in a child nutrition program does not also administer such program, it shall collaborate with the administering agency by (1) giving that agency an opportunity to review all such contracts to determine whether end products to be provided contribute to required nutritional standards for reimbursement under the applicable regulations for such program (7 CFR Parts 210, 220, 225, and 226) or are otherwise suitable for use in such

program; (2) consult with that agency with regard to the labeling requirements for the end products; and (3) otherwise request technical assistance as needed from that agency.

(r) *FNS Regional Office review of contracts and inventory reports.* The FNS Regional Office shall (1) review all processing contracts and provide guidance, including written recommendations for termination, where necessary, to distributing agencies concerning any contracts which do not meet the requirements of this section, (2) allow distributing agencies 30 days to respond to any recommendation concerning contracts not meeting the requirements of this section, (3) review and analyze the processing inventory reports required by paragraph (p) of this section to insure that no additional donated foods shall be distributed to processors with excess inventories, and (4) assist distributing agencies in reducing such inventories.

(s) *Availability of copies of processing contracts.* Contracts entered into in accordance with this section are public records and FNS will provide copies of such contracts to any person upon request. The FNS Regional Office shall retain copies of processing contracts submitted by distributing agencies for a period of three years from the close of the fiscal year to which they pertain.

(t) *Processing activity guidance.*

Distributing agencies shall develop and provide a processing manual or similar procedural material for guidance to contracting agencies, recipient agencies, and processors. The manual shall include, at a minimum, a copy of the standard form contract(s) and statements of the distribution agency's policies and procedures on (1) contract approval, (2) monitoring and review of processing activities, (3) recordkeeping and reporting requirements, (4) inventory controls, and (5) refund applications. This guidance material shall be provided to processors within 60 days of annual agreement approval by the State distributing agency. This material will also be provided to recipient agencies and contracting agencies within 60 days of approval of the annual agreement to receive donated commodities by the State and distributing agency.

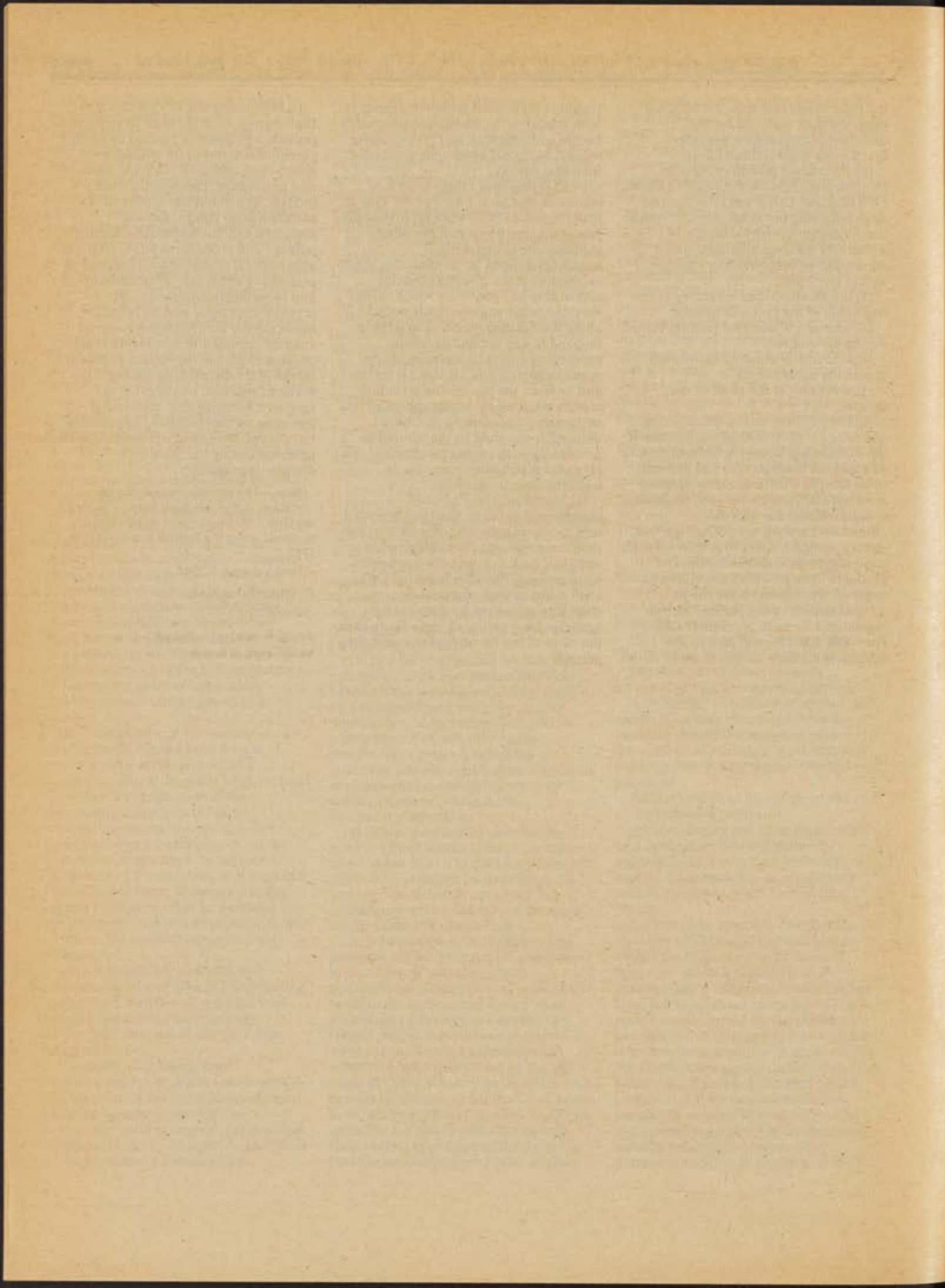
**Note.**—The reporting requirements contained in this rule have been submitted to the Office of Management and Budget for approval under the Federal Reports Act of 1942.

Dated: August 7, 1981.

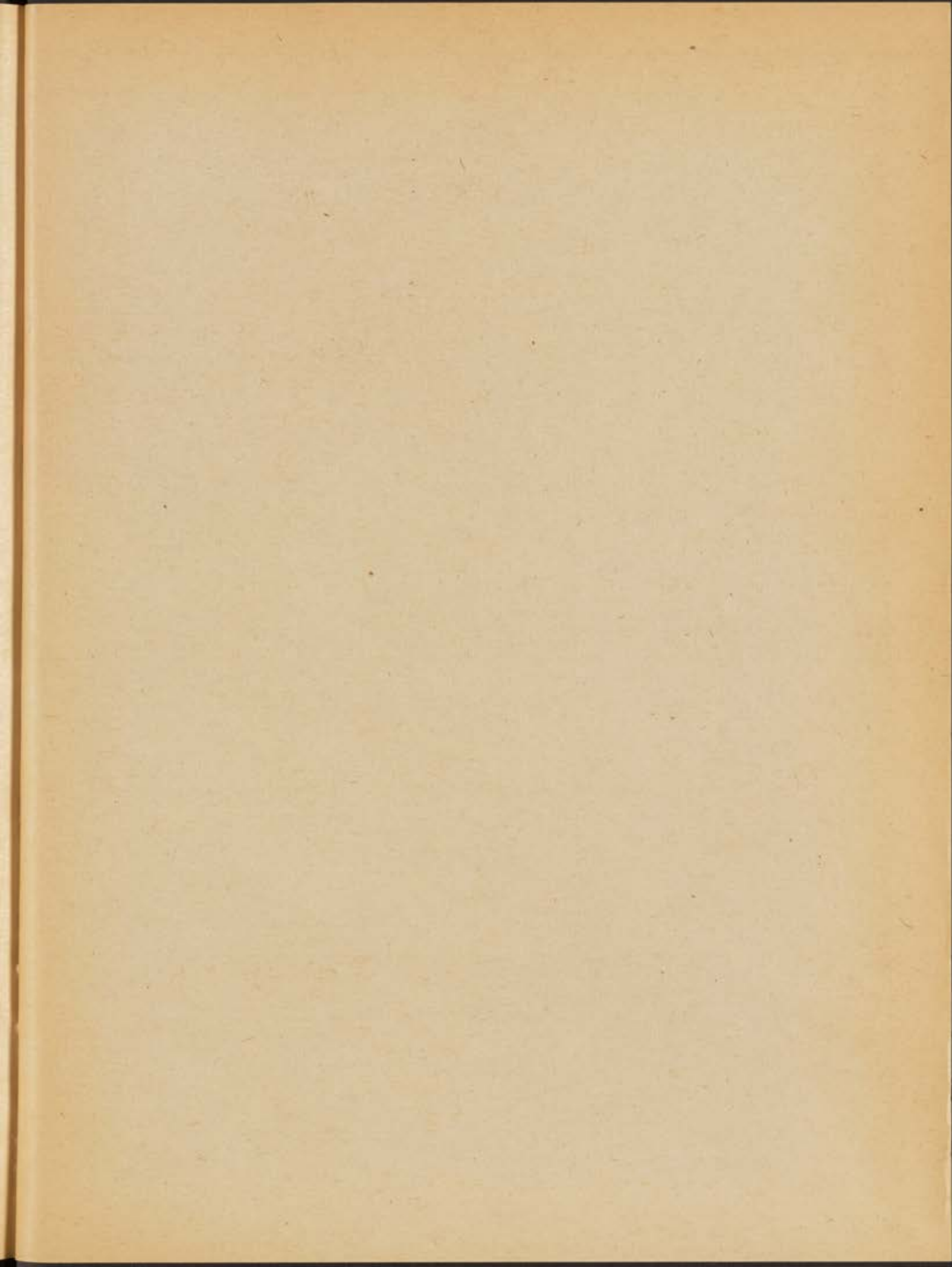
G. William Hoagland,  
Administrator.

[FR Doc. 81-23824 Filed 8-13-81; 8:45 am]  
BILLING CODE 3410-30-M

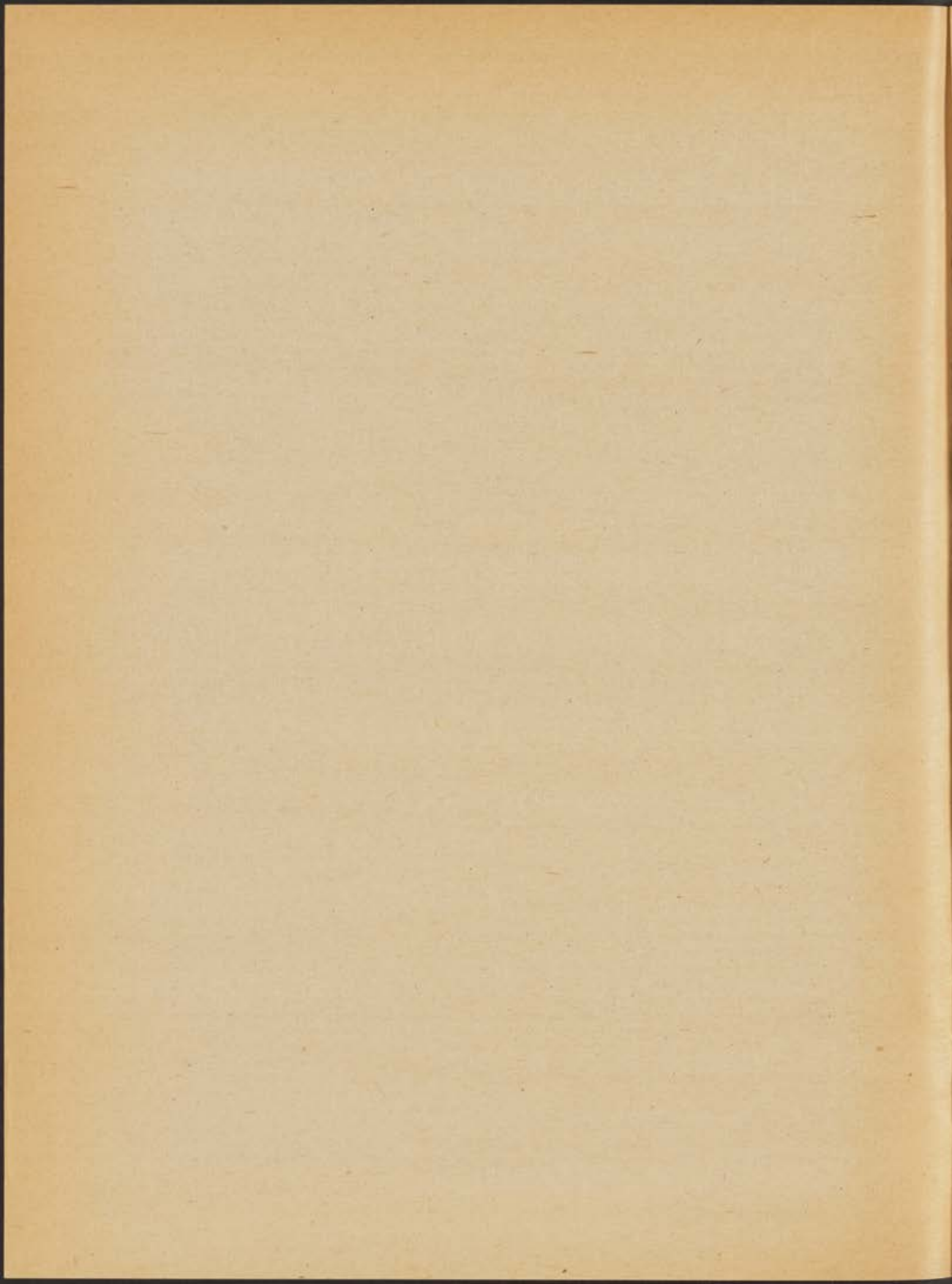




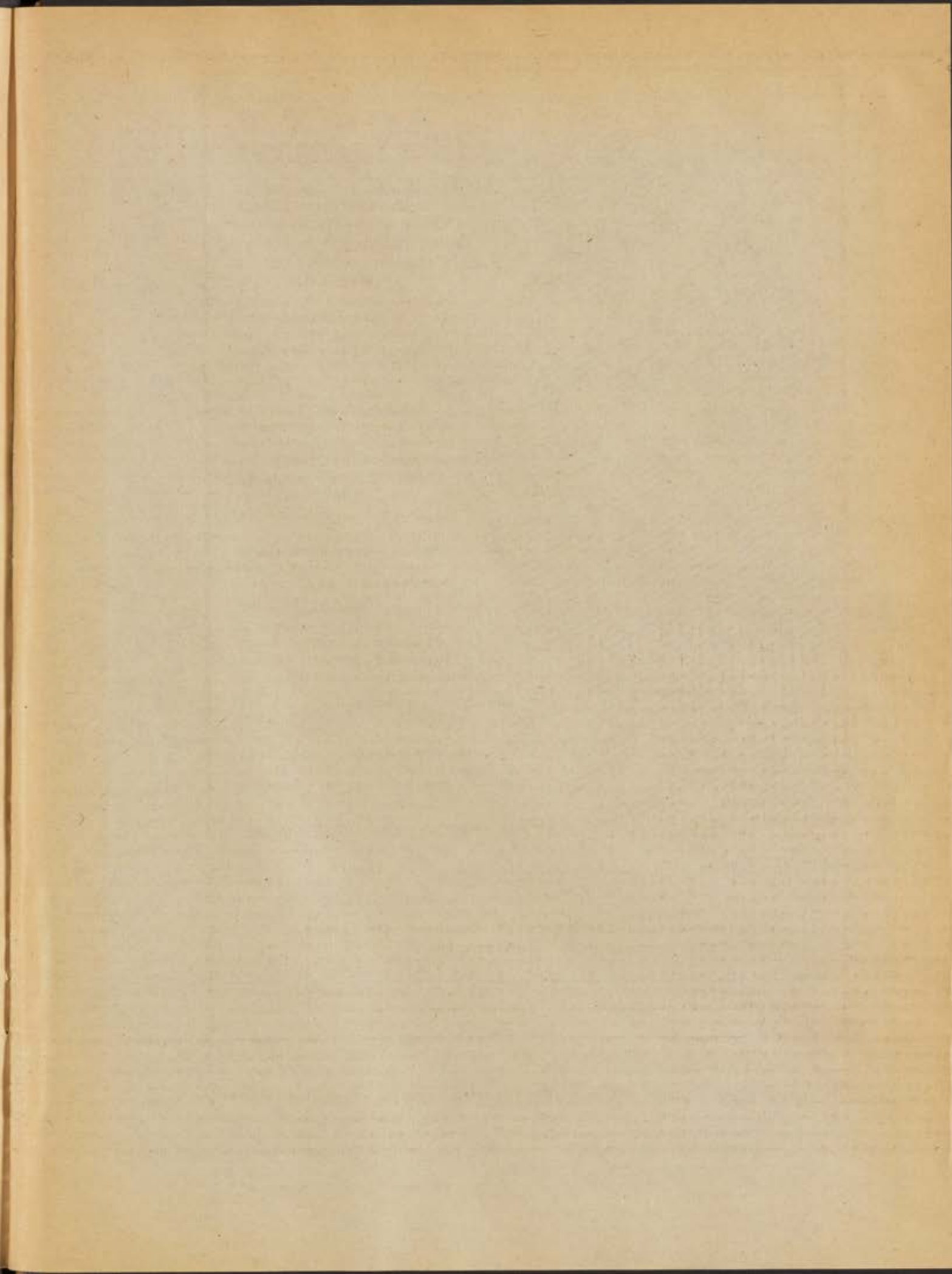
















## would you like to know

if any changes have been made in certain titles of the CODE OF FEDERAL REGULATIONS without reading the Federal Register every day? If so, you may wish to subscribe to the LSA (List of CFR Sections Affected), the "Federal Register Index," or both.

### LSA (List of CFR Sections Affected)

**\$10.00**  
per year

The LSA (List of CFR Sections Affected) is designed to lead users of the Code of Federal Regulations to amendatory actions published in the Federal Register, and is issued monthly in cumulative form. Entries indicate the nature of the changes.

### Federal Register Index **\$8.00** per year

Indexes covering the contents of the daily Federal Register are issued monthly in cumulative form. Entries are carried primarily under the names of the issuing agencies. Significant subjects are carried as cross-references.

A finding aid is included in each publication which lists Federal Register page numbers with the date of publication in the Federal Register.

**Note to FR Subscribers:** FR Indexes and the LSA (List of CFR Sections Affected) will continue to be mailed free of charge to regular FR subscribers.

Mail order form to:  
Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402

There is enclosed \$\_\_\_\_\_ for \_\_\_\_\_ subscription(s) to the publications checked below:

..... LSA (LIST OF CFR SECTIONS AFFECTED) (\$10.00 a year domestic; \$12.50 foreign)

..... FEDERAL REGISTER INDEX (\$8.00 a year domestic; \$10.00 foreign)

Name \_\_\_\_\_

Street Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ ZIP \_\_\_\_\_

Make check payable to the Superintendent of Documents